

<p style="text-align: right;">142</p> <p>1 testimony earlier today that Humana does not have 2 capitated arrangements with provider groups? 3 A. If I stated that, that was misspoken. We 4 do not to my knowledge have capitated contracts 5 strictly for drugs. 6 Q. Okay. Does Humana have capitated 7 contracts where the amount paid pursuant to 8 capitation agreements is intended to encompass 9 drugs? 10 A. I can't answer that specifically, but I 11 believe that does not exist. 12 Q. Okay. So to the best of your knowledge, 13 in every instance where there is a capitated 14 arrangement with a provider group, there will be a 15 separate provision pertaining to drug reimbursement 16 on top of the capitated rate; is that a fair 17 statement? 18 A. I believe so. 19 Q. Can you turn to 864, please, and have a 20 look at Clause 22.2. 21 A. Okay. 22 Q. To the best of your knowledge, are these</p>	<p style="text-align: right;">144</p> <p>1 information relevant to renegotiations. 2 MR. ST. PHILLIP: Okay, we'll preserve 3 this right. You can answer. 4 MR. MANGI: That's fine. 5 THE WITNESS: I have not been involved 6 with, nor do I have the wherewithal to be commenting 7 on audits and evaluations as contract provisions. 8 That is way outside my purview. 9 BY MR. MANGI: 10 Q. Well, we can agree that pursuant to this 11 clause, Humana has a right to conduct such an audit, 12 gain such information from the provider? 13 MR. ST. PHILLIP: Objection insofar as it 14 calls for a legal conclusion. 15 THE WITNESS: I have nothing more to add 16 than what that paragraph or that section in and of 17 itself says. 18 BY MR. MANGI: 19 Q. Okay. Well, we can agree that this allows 20 Humana to conduct audits of physicians, correct? 21 MR. ST. PHILLIP: Objection, asked and 22 answered and it calls for a legal conclusion.</p>
<p style="text-align: right;">143</p> <p>1 sorts of audit provisions standard in Humana's 2 contracts with providers? 3 A. I cannot speak to that. 4 Q. Do you know whether Humana has ever 5 exercised its rights pursuant to contract to audit 6 providers? 7 A. Beyond my purview. I would have no 8 knowledge if they have. 9 Q. Would you know whether pursuant to such 10 orders Humana could gain access to records showing 11 the amounts providers paid to acquire drugs? 12 MR. ST. PHILLIP: I'm going to object. I 13 cannot find any deposition topic on this list that 14 has to do with audit rights. 15 MR. MANGI: It's encompassed within other 16 subject matters. 17 MR. ST. PHILLIP: So based on that, I'm 18 not going to consent to have the witness testify 19 about when and to what extent we audited physicians' 20 records for purposes of bookkeeping. 21 MR. MANGI: Audits are relevant insofar as 22 information about acquisition costs is obtained,</p>	<p style="text-align: right;">145</p> <p>1 THE WITNESS: Strictly based on language 2 that I see in this section, I can only assume that 3 Humana may have that right. 4 BY MR. MANGI: 5 Q. HUM-869, please, clause 29.1. This clause 6 provides Humana with the right to inspect the 7 facilities, books, records and operations of the 8 physician group, correct? 9 MR. ST. PHILLIP: Objection, calls for a 10 legal conclusion. Humana doesn't consent to have 11 this witness testify concerning the interpretation 12 of this contract language. 13 THE WITNESS: Are you waiting on an answer 14 from me? 15 THE REPORTER: Yes. 16 THE WITNESS: Well, this is outside the 17 scope of my responsibilities with Humana, and I do 18 not have the necessary legal expertise to answer 19 your question solely. 20 BY MR. MANGI: 21 Q. All right. Well, can we agree that the 22 clause states here, "Humana has reasonable access</p>

38 (Pages 146 to 149)

<p>146</p> <p>1 and opportunity to fairly examine," and then I will</p> <p>2 skip some of this language here, "the facilities,</p> <p>3 books, records and operations of the group." You</p> <p>4 see that language, right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know whether Humana ever exercised</p> <p>7 its rights pursuant to this clause or similar</p> <p>8 clauses in other contracts?</p> <p>9 MR. ST. PHILLIP: I object. This requires</p> <p>10 him to characterize Humana's rights, but to the</p> <p>11 extent the witness can testify about whether he has</p> <p>12 or has not obtained the information that's discussed</p> <p>13 in this paragraph, I'll allow him to answer that.</p> <p>14 THE WITNESS: I have no knowledge of</p> <p>15 Humana ever exercising this right.</p> <p>16 Q. Will you turn to page HUM-892, please.</p> <p>17 MR. NOTARGIACOMO: Repeat that page</p> <p>18 number.</p> <p>19 MR. MANGI: 892.</p> <p>20 BY MR. MANGI:</p> <p>21 Q. You'll see that this refers to a capitated</p> <p>22 rate, right?</p>	<p>148</p> <p>1 IDENTIFICATION.)</p> <p>2</p> <p>3 MR. ST. PHILLIP: And again, with respect</p> <p>4 to any authentication or knowledge question, I'll</p> <p>5 reiterate my objection based on Paragraph 25.</p> <p>6 MR. MANGI: Yeah. Let me back up a moment</p> <p>7 and ask counsel, that -- will counsel instruct the</p> <p>8 witness not to answer questions pertaining to the</p> <p>9 authenticity of this document or its status in this</p> <p>10 record?</p> <p>11 MR. ST. PHILLIP: As has been my practice.</p> <p>12 all day, I'm preserving the objections based upon</p> <p>13 the exclusion, and I'm allowing the witness to</p> <p>14 testify based upon preservation of our right to</p> <p>15 strike his testimony based on the magistrate judge's</p> <p>16 order limiting the scope of the deposition.</p> <p>17 MR. MANGI: Understood.</p> <p>18 BY MR. MANGI:</p> <p>19 Q. If I could just draw you back to the</p> <p>20 previous document for a moment. Is this an</p> <p>21 authentic copy of a document maintained in Humana's</p> <p>22 files in the ordinary course of business pursuant to</p>
<p>147</p> <p>1 MR. ST. PHILLIP: Objection.</p> <p>2 BY MR. MANGI:</p> <p>3 Q. Do you see the heading Flat Capitation?</p> <p>4 A. Yes.</p> <p>5 Q. So is it your understanding that insofar</p> <p>6 as capitated rates are provided for in this</p> <p>7 agreement, there would be a separate reimbursement</p> <p>8 for drugs in addition to the capitated amounts?</p> <p>9 A. Based on this page, there's not enough</p> <p>10 information to say one way or the other.</p> <p>11 Q. Based on your experience, you're not aware</p> <p>12 of any contracts that provide for capitated rates</p> <p>13 alone; is that correct?</p> <p>14 A. Looking at this specific contract, like I</p> <p>15 said, it doesn't have enough information. As a</p> <p>16 general statement, I don't know. I don't believe</p> <p>17 so.</p> <p>18 Q. Okay. Let's look at another document</p> <p>19 which we'll mark as Exhibit Lemke 003. This is</p> <p>20 Bates Number HUM-913 to 929.</p> <p>21</p> <p>22 (Exhibit Lemke 003 WAS MARKED FOR</p>	<p>149</p> <p>1 document retention policy?</p> <p>2 MR. ST. PHILLIP: And I object based on</p> <p>3 Paragraph 25 of the deposition submission. You may</p> <p>4 answer.</p> <p>5 THE WITNESS: I can't attest to that,</p> <p>6 because this document preservation is not part of my</p> <p>7 duties and responsibilities and have no control of</p> <p>8 it, so I cannot answer that.</p> <p>9 BY MR. MANGI:</p> <p>10 Q. Can we agree that this is an authentic</p> <p>11 copy of a document from Humana's files?</p> <p>12 MR. ST. PHILLIP: Objection, and the</p> <p>13 witness just answered the question.</p> <p>14 MR. MANGI: I believe he was testifying</p> <p>15 about retention policies specifically. I'm asking</p> <p>16 him a different question.</p> <p>17 MR. ST. PHILLIP: Okay, same objection.</p> <p>18 THE WITNESS: I have no way to ensure that</p> <p>19 this is an authentic copy of the agreement between</p> <p>20 these parties.</p> <p>21 BY MR. MANGI:</p> <p>22 Q. Okay. Are contracts such as this</p>

<p style="text-align: right;">150</p> <p>1 maintained in Humana's file in the ordinary course 2 of business? 3 MR. ST. PHILLIP: Same objection. 4 THE WITNESS: I can only assume they would 5 be. 6 BY MR. MANGI: 7 Q. Now, turning to what we've marked as 8 Exhibit Lemke 003. 9 (WITNESS REVIEWS DOCUMENT.) 10 MR. ST. PHILLIP: Sorry to interrupt you. 11 BY MR. MANGI: 12 Q. And again, feel free to familiarize 13 yourself and draw your attention to specific terms. 14 A. Okay. 15 Q. Now, if you'll take a quick glance at Page 16 923, you'll see there a signature block. 17 A. Okay. 18 Q. So this would appear to be a final signed 19 contract, correct? 20 MR. ST. PHILLIP: Objection. 21 THE WITNESS: It appears to be. 22 BY MR. MANGI:</p>	<p style="text-align: right;">152</p> <p>1 was disclosed, we redacted it. 2 MR. MANGI: Are you aware that the names 3 of some contractor providers are redacted, but not 4 others, in Humana's production? 5 MR. ST. PHILLIP: We are aware of that. 6 MR. MANGI: Nonetheless, you maintain that 7 some providers are competitively sensitive and 8 others are not? 9 MR. ST. PHILLIP: Humana may have agreed 10 to waive its rights to protect that information in 11 some cases and not in other cases. 12 BY MR. MANGI: 13 Q. Can I draw your attention to HUM-915, 14 please. 15 A. Okay. 16 Q. You'll see under 7.1, the payment method, 17 there's a reference there to Attachment B, the 18 payment method. Do you see that? 19 A. Uh-huh. 20 Q. I will ask you to turn to Attachment B, 21 which is at HUM-927. 22 (WITNESS REVIEWS DOCUMENT.)</p>
<p style="text-align: right;">151</p> <p>1 Q. And if you turn back to the first page, in 2 the top paragraph, you'll see the agreement is 3 between Humana, and then there's a blank, and then 4 "ancillary provider licensed under the laws of the 5 State of Florida." Do you see that? 6 A. Uh-huh. 7 Q. Is it your understanding that the name of 8 the entity has been redacted from this document? 9 MR. ST. PHILLIP: As Humana's attorney, I 10 can tell you it has. 11 MR. MANGI: Okay. What is the basis for 12 that redaction? 13 MR. ST. PHILLIP: Privileged information. 14 MR. MANGI: I'm sorry, what was that? 15 MR. ST. PHILLIP: It is information that 16 is has competitive pricing with respect to 17 particular plan. We don't believe that there's any 18 necessity to answer the questions listed in the 19 deposition subjects by reference to a particular 20 provider, and as a result, because this could -- the 21 disclosure of this information could damage Humana's 22 competitive place in the market if the information</p>	<p style="text-align: right;">153</p> <p>1 BY MR. MANGI: 2 Q. Okay? 3 A. Yes. 4 MR. ST. PHILLIP: I also note for the 5 record that 929 is also Attachment B. 6 MR. MANGI: Yes, and it states, "Add to 7 attached price list." 8 MR. ST. PHILLIP: Right. 9 BY MR. MANGI: 10 Q. Sticking with 927, you'll see here that 11 there's on the left column antibiotics, and then AWP 12 minus 15 plus \$22 a day for first dose, that's 13 specified as the payment method. Do you see that? 14 A. Yes. 15 Q. Underneath it, there's a handwritten note 16 "Includes IV/IG plus missed categories of drugs." 17 What do you understand IV/IG to mean? 18 MR. ST. PHILLIP: Objection. 19 THE WITNESS: I do not know. 20 BY MR. MANGI: 21 Q. Under Chemotherapy, there is acquisition 22 costs plus a \$50 a day dispensing fee.</p>

40 (Pages 154 to 157)

<p>1 MR. ST. PHILLIP: And for the record, it 2 says -- stars acquisition costs, and refers down on 3 Page 928 to acquisition costs. 4 BY MR. MANGI: 5 Q. And to follow-up on what counsel just 6 said, I'll read for the record that on Page HUM-928, 7 there is a header, Acquisition Costs, with a star 8 next to it, and underneath it, says, "Shall be 9 defined as net acquisition for products paid by 10 ancillary providers. Providers shall make available 11 to Humana documentation to verify costs upon 12 reasonable request." Do you see that? 13 A. Yes. 14 Q. Now, earlier today, I had asked whether 15 Humana has ever sought to find out from providers by 16 contract or otherwise what their acquisition costs 17 for drugs were, and I believe your answer to that 18 was no. Do you recall that testimony? 19 MR. ST. PHILLIP: Objection. 20 THE WITNESS: I believe my answer is not 21 to my knowledge. 22</p>	<p>154 1 best of your knowledge; is that correct? 2 MR. ST. PHILLIP: Objection. 3 THE WITNESS: Humana does in the case with 4 this particular provider, yes. 5 BY MR. MANGI: 6 Q. Okay. But it does not require disclosure 7 of acquisition costs in the majority of contracts to 8 the best of your knowledge; is that correct? 9 A. To the best of my knowledge. 10 Q. It could do so if it chose to do so, as 11 it's done in this contract, right? 12 MR. ST. PHILLIP: Objection. 13 THE WITNESS: Only to the point that it is 14 an agreed-upon practice in the -- or allowable in 15 the contract. 16 BY MR. MANGI: 17 Q. And we can agree that here, even where 18 acquisition cost is expressly used in a formula, 19 Humana still pays an additional amount dispensing 20 fee to the provider, correct? It's not reimbursing 21 it at the flat acquisition cost? 22 MR. ST. PHILLIP: I'm going to object</p>
<p>1 BY MR. MANGI: 2 Q. Okay. 3 A. That we do it. 4 Q. Okay. But we can agree, looking at this 5 contract, that there are instances such as this one 6 where Humana does expressly provide for 7 reimbursement by reference to acquisition costs plus 8 a certain amount, right? 9 MR. ST. PHILLIP: Objection insofar as 10 this document talks about chemotherapy and pain 11 management with respect to acquisition costs. I 12 don't know if this discusses drugs, but with that 13 objection, the witness can answer. 14 BY MR. MANGI: 15 Q. Go ahead. 16 A. This is a specific contract with a 17 specific provider for specific services. And as the 18 contract indicates, we could request that 19 information if we so choose. 20 Q. So there are instances where Humana has 21 sought acquisition cost information from providers, 22 but it doesn't do so in the ordinary course to the</p>	<p>155 1 based upon this witness's interpretation of the 2 contract really is a legal issue, and to the extent 3 he's not an attorney, we don't consent to him giving 4 legal advice to what the terms of the contract do. 5 MR. MANGI: One doesn't have to be an 6 attorney to read the cost plus \$50 a day dispensing 7 fee. 8 MR. ST. PHILLIP: With that objection, the 9 witness can answer. 10 THE WITNESS: I believe the question was 11 that we pay for that separately over and above 12 acquisition. 13 BY MR. MANGI: 14 Q. Right. 15 A. In this particular contract, that's the 16 way the contract is written, so the answer is yes. 17 Q. Thank you. We're done with that document 18 for now. 19 (OFF-THE-RECORD DISCUSSION.) 20 MR. MANGI: Let's mark this as an exhibit, 21 please. 22 (Exhibit Lemke 004 WAS MARKED FOR</p>

<p>1 IDENTIFICATION.) 158</p> <p>2 BY MR. MANGI:</p> <p>3 Q. We are looking at HUM-1151 to 1201. Here</p> <p>4 you go.</p> <p>5 (DOCUMENT TENDERED.)</p> <p>6 BY MR. MANGI:</p> <p>7 Q. Again, take your time to familiarize</p> <p>8 yourself. I'll have specific questions on this one.</p> <p>9 (WITNESS REVIEWS DOCUMENT.)</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. MANGI:</p> <p>12 Q. Now, this is another contract between</p> <p>13 Humana and a physician group, right?</p> <p>14 MR. ST. PHILLIP: I'm going to object</p> <p>15 based on the exclusion of Deposition Subject No. 25.</p> <p>16 Humana does not consent to have this witness testify</p> <p>17 concerning the authentication and knowledge of the</p> <p>18 documents produced in this litigation consistent</p> <p>19 with magistrate judge's November 2nd, 2004 order.</p> <p>20 Preserving our right to move to strike the answer,</p> <p>21 I'm going to let the witness testify and continue</p> <p>22 our objections along this line with respect to this</p>	<p>1 payment arrangement references Attachment E. 160</p> <p>2 A. Yes.</p> <p>3 Q. And matter of fact, ask you to turn to</p> <p>4 Attachment E, which is at 1196.</p> <p>5 A. Yes.</p> <p>6 Q. And you will see that there are three</p> <p>7 sections here referencing different plans, but</p> <p>8 they're the same to the extent that they provide for</p> <p>9 payment at 80 percent of Humana's Medicare fee</p> <p>10 schedule or the usual customary charges, but has a</p> <p>11 separate star star provision stating that drugs are</p> <p>12 to be reimbursed at AWP less 16 percent. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Is this an example of the type of plan you</p> <p>16 referenced earlier that uses what you referred to as</p> <p>17 the alternative AWP based methodology?</p> <p>18 A. Based on my reading of this contract, it</p> <p>19 certainly appears as so.</p> <p>20 Q. Okay. That's all I have for that</p> <p>21 document. Now, are you familiar with or have you</p> <p>22 heard of the Office of the Inspector General, the</p>
<p>1 document. 159</p> <p>2 MR. MANGI: Again, we disagree for the</p> <p>3 reasons stated, but again, to the extent it will</p> <p>4 make your life easier, if you want to reference a</p> <p>5 standing objection.</p> <p>6 MR. ST. PHILLIP: Okay. Let's do that.</p> <p>7 Let's continue that objection with respect to this</p> <p>8 and any other documents.</p> <p>9 MR. MANGI: Any other document on</p> <p>10 authentication issues?</p> <p>11 MR. ST. PHILLIP: Yes.</p> <p>12 MR. MANGI: Understood.</p> <p>13 BY MR. MANGI:</p> <p>14 Q. Could I draw your attention -- I'm sorry,</p> <p>15 did you answer the previous question? This is an</p> <p>16 agreement between Humana and a physician group,</p> <p>17 right?</p> <p>18 A. It appears to be.</p> <p>19 Q. Okay. I will draw your attention to 1165,</p> <p>20 please.</p> <p>21 A. Okay.</p> <p>22 Q. And under Clause 22.1, you'll see that the</p>	<p>1 161</p> <p>2 161</p> <p>3 161</p> <p>4 161</p> <p>5 161</p> <p>6 161</p> <p>7 161</p> <p>8 161</p> <p>9 161</p> <p>10 161</p> <p>11 161</p> <p>12 161</p> <p>13 161</p> <p>14 161</p> <p>15 161</p> <p>16 161</p> <p>17 161</p> <p>18 161</p> <p>19 161</p> <p>20 161</p> <p>21 161</p> <p>22 161</p>

42 (Pages 162 to 165)

162

1 very, very limited, and I really have no answer to
2 that question.
3 BY MR. MANGI:
4 Q. You're aware it's a government entity,
5 right?
6 A. I agree it's a government entity.
7 MR. MANGI: Okay. Can we mark this as
8 Exhibit Lemke 005.
9 (Exhibit Lemke 005 WAS MARKED FOR
10 IDENTIFICATION.)
11 BY MR. MANGI:
12 Q. Now, this is an OIG report from November
13 of 1992. Right, do you see that on the --
14 MR. ST. PHILLIP: I'm going to continue my
15 objection with respect to this document based upon
16 the exclusion of Topic Number 24, which states,
17 "Your client's knowledge of government studies,
18 reports and communications concerning the actual
19 acquisition costs for drugs," so.
20 MR. MANGI: This is encompassed by other
21 areas, and you've already made the objection. Feel
22 free to reiterate it.

163

1 MR. ST. PHILLIP: I'll continue it with
2 respect to any questions about this study.
3 MR. MANGI: That's fine. You can have a
4 standing objection to that.
5 BY MR. MANGI:
6 Q. So you can see this is a public document
7 put out by the OIG in November of 1992. Do you see
8 that at the top of the page?
9 A. Yes.
10 Q. And I would like to direct you to the
11 second full paragraph, starting with, "Our results
12 indicate."
13 A. Yes.
14 Q. You see that? And I'll read that for the
15 record. "Our results indicate that for the
16 physicians surveyed, the 13 chemotherapy drugs can
17 be purchased an amounts below the established
18 average wholesale price, and that AWP is not a
19 reliable indicator of the cost of the drug to
20 physicians." Do you see that language?
21 A. Yes.
22 Q. Now, did this knowledge that AWP is not a

164

1 reliable indicator of the cost of the drug to
2 physicians, does Humana rely upon this information
3 in determining its reimbursement rates at any time
4 between 1992 and the present?
5 A. I would have no knowledge of that.
6 Q. But certainly we can agree that this
7 information is in the public domain?
8 MR. ST. PHILLIP: Objection. Is it?
9 MR. MANGI: Yes, it's an OIG report.
10 MR. ST. PHILLIP: Okay.
11 BY MR. MANGI:
12 Q. Would you like the question read back?
13 A. No, I presume it is. I have no personal
14 knowledge whether it is or isn't.
15 Q. Now, are there others at Humana who may be
16 aware of this report and who may have relied upon
17 this in setting reimbursement rates?
18 MR. ST. PHILLIP: Objection.
19 THE WITNESS: Based on the specific date
20 of that document, it was before my employ with
21 Humana. I cannot say whether or not any other
22 individual within the Humana organization would have

165

1 access to or followed that or use that for any
2 reason.
3 BY MR. MANGI:
4 Q. Do you know whether anyone at Humana has
5 relied upon this information subsequent to 2000?
6 A. No, I do not.
7 Q. May I draw your attention to Appendix 3 to
8 that document, and it's about -- oh, seven or eight
9 pages from the back.
10 MR. ST. PHILLIP: Titled Invoice Costs?
11 MR. MANGI: Yes, expresses a percentage
12 below AWP.
13 BY MR. MANGI:
14 Q. Have you located that page?
15 A. Yes.
16 Q. And I'm going to refer you to the bottom
17 two drugs on that table, vinblastine sulphate and
18 vincristine sulphate. You'll see that for brand
19 name manufacturers, which is the second column, the
20 invoiced costs are 63 percent below AWP for the
21 first and 83 percent below AWP for the second. Do
22 you see that?

<p>166</p> <p>1 MR. ST. PHILLIP: I'm going to make 2 another objection so far as it doesn't appear that 3 those two drugs are on the list of the drugs that 4 were provided to us from the defendants as 5 encompassed by the subpoena. So with that 6 objection, I'll allow the witness to answer. 7 THE WITNESS: I do see them on the 8 schedule. 9 BY MR. MANGI: 10 Q. Is Humana aware that as early as 1992, the 11 OIG public report had flagged certain physician 12 administered drugs as being acquired at a percentage 13 from 63 to 83 percent below their AWP's? 14 MR. ST. PHILLIP: Same objection. 15 THE WITNESS: No, I'm not aware of it. 16 BY MR. MANGI: 17 Q. Do you know whether or not this 18 information was considered by Humana in setting its 19 reimbursement methodologies at any time between 1992 20 and the present? 21 MR. ST. PHILLIP: Same objection. 22 THE WITNESS: I have no knowledge of</p>	<p>168</p> <p>1 BY MR. MANGI: 2 Q. To the extent that this document is 3 publicly available, can we agree to that? 4 A. Yes, I could agree to that. 5 MR. MANGI: Can we turn to a document 6 we'll mark as Exhibit Lemke 006, please. And Ed, 7 this is a 1997 OIG report. I apologize, I don't 8 have a copy. 9 (Exhibit Lemke 006 WAS MARKED FOR 10 IDENTIFICATION.) 11 BY MR. MANGI: 12 Q. Now, from the cover page, you can see this 13 is a December, 1997 publication from the Office of 14 the Inspector General, correct? 15 A. Correct. 16 Q. Okay. Can I draw your attention to the 17 page numbered small three, Roman three. And I would 18 like to draw your attention to the second paragraph 19 on the bottom, which states, "In this report, we 20 have identified Medicare allowances that were 11 to 21 900 percent greater than the drug prices available 22 to the physician and supplier community." Do you</p>
<p>167</p> <p>1 Humana using this information: 2 BY MR. MANGI: 3 Q. We can agree that Humana could have 4 utilized this information if it chose to do so, 5 right? 6 MR. ST. PHILLIP: Same objection. Calls 7 for speculation. 8 THE WITNESS: I can only speculate that 9 they may have. 10 MR. MANGI: Okay. Would you mind reading 11 back my question, please. 12 (RECORD READ.) 13 BY MR. MANGI: 14 Q. Just to be clear, my question now is not 15 whether they may have, but slightly different. We 16 can agree that Humana could have utilized this 17 information if it had chosen to do so at any time 18 between 1992 and the present in setting its 19 reimbursement rates for drugs? 20 MR. ST. PHILLIP: And the reason for my 21 objection is you haven't established that this 22 document is publicly available.</p>	<p>169</p> <p>1 see that? 2 A. Yes. 3 Q. Do you know whether or not anyone at 4 Humana relied upon this report and this information 5 in setting reimbursement rates for drugs at any time 6 between 1997 and the present? 7 A. No, I do not. 8 Q. We can certainly agree that Humana could 9 have relied upon this information if it chose to do 10 so, correct? 11 MR. ST. PHILLIP: Objection, foundation. 12 THE WITNESS: If in fact someone at Humana 13 was aware of it and it was a public document, yes. 14 MR. MANGI: Why don't we take a quick 15 break, and then hopefully I should be done soon 16 after that. 17 (A SHORT BREAK WAS TAKEN.) 18 19 BY MR. MANGI: 20 Q. Now, Mister Lemke, we were looking at a 21 number of documents before the break. Exhibits 2 to 22 4 were contracts. Do you recall those documents?</p>

44 (Pages 170 to 173)

<p>170</p> <p>1 A. Yes.</p> <p>2 Q. Those documents are maintained in Humana's</p> <p>3 files in the ordinary course of business, correct?</p> <p>4 MR. ST. PHILLIP: Objection.</p> <p>5 THE WITNESS: I'm not personally</p> <p>6 responsible for retaining them, but I assume that</p> <p>7 copies are retained.</p> <p>8 BY MR. MANGI:</p> <p>9 Q. Now, we discussed at the -- in the morning</p> <p>10 your employment history prior to 2000. In any of</p> <p>11 the jobs you had prior to 2000, were you involved in</p> <p>12 reimbursement for drugs?</p> <p>13 A. Yes, I stated earlier.</p> <p>14 Q. With which entities were you involved in</p> <p>15 reimbursement?</p> <p>16 A. Kurten Medical Group.</p> <p>17 Q. And I believe you testified about</p> <p>18 reimbursement made by Kurten to subcontracted</p> <p>19 provider groups?</p> <p>20 A. That's correct.</p> <p>21 Q. Other than that aspect of your work at</p> <p>22 Kurten, were there any other jobs you had or any</p>	<p>172</p> <p>1 Q. You have to answer verbally.</p> <p>2 A. Yes.</p> <p>3 MR. ST. PHILLIP: Yes, and I believe I</p> <p>4 also observed insofar as it was beyond the temporal</p> <p>5 scope of the deposition, so I'll continue that</p> <p>6 objection.</p> <p>7 BY MR. MANGI:</p> <p>8 Q. Are there others at Humana who would be</p> <p>9 more knowledgeable as to whether or not those</p> <p>10 contracts exist post 2000?</p> <p>11 A. Clarify which contracts you're referring</p> <p>12 to.</p> <p>13 Q. Manufacturers' contracts with providers.</p> <p>14 A. Anyone else at Humana? I do not know of</p> <p>15 an individual within Humana that would have that</p> <p>16 knowledge, no.</p> <p>17 Q. Is it fair to say that there may be other</p> <p>18 individuals who have that knowledge, but you,</p> <p>19 because of the job functions that you perform, have</p> <p>20 not come across such agreements post 2000?</p> <p>21 MR. ST. PHILLIP: I'm going to object and</p> <p>22 instruct the witness not to answer this question.</p>
<p>171</p> <p>1 other roles you played that involved a reimbursement</p> <p>2 for drugs?</p> <p>3 A. Only with Humana.</p> <p>4 MR. MANGI: Okay. Off the record.</p> <p>5 (OFF-THE-RECORD DISCUSSION.)</p> <p>6 BY MR. MANGI:</p> <p>7 Q. Now, you testified earlier also that</p> <p>8 you're aware of the fact that manufacturers have</p> <p>9 rebate contracts with -- have had rebate contracts</p> <p>10 with providers in the past based on your prior</p> <p>11 experience, right?</p> <p>12 A. I don't recall that.</p> <p>13 Q. Okay. Let's address that topic again. As</p> <p>14 I recall, correct me if I'm wrong, as I recall, your</p> <p>15 testimony was that you're aware, based on your prior</p> <p>16 jobs, that manufacturers have rebate contracts with</p> <p>17 providers in relation to some drugs, but that you're</p> <p>18 not aware whether or not those still exist because</p> <p>19 you have no involvement with them in your control.</p> <p>20 A. That's a correct statement.</p> <p>21 Q. Okay. You recall that testimony?</p> <p>22 A. (WITNESS MOVES HEAD UP AND DOWN.)</p>	<p>173</p> <p>1 This witness has been proposed as a 30(b)(6) witness</p> <p>2 and speaks only on behalf of Humana for these</p> <p>3 topics. Rule 30(b)(6) does not require the</p> <p>4 production of anybody who has the most knowledge in</p> <p>5 a particular category, but only someone who has</p> <p>6 consented to testify on behalf of the organization</p> <p>7 with respect to the organization's knowledge. And</p> <p>8 Mister Lemke has been told of the way that the</p> <p>9 30(b)(6) deposition works and has within bounds of</p> <p>10 reasonableness attempted to gain as much</p> <p>11 understanding as possible about the topics that have</p> <p>12 been -- Humana has been ordered to testify</p> <p>13 concerning.</p> <p>14 BY MR. MANGI:</p> <p>15 Q. Well, Mister Lemke, based upon what</p> <p>16 counsel just said, have you attempted to educate</p> <p>17 yourself prior to this deposition as to knowledge</p> <p>18 that others at Humana may have regarding</p> <p>19 manufacturers' rebate contracts with providers?</p> <p>20 A. Not on that particular topic, no.</p> <p>21 Q. So there may be others that may -- that</p> <p>22 have that knowledge, there may not be, you just</p>

<p>174</p> <p>1 don't know; is that a true statement?</p> <p>2 A. I do not know.</p> <p>3 Q. How did you prepare for your deposition</p> <p>4 today?</p> <p>5 MR. ST. PHILLIP: Insofar as just caution</p> <p>6 the witness insofar as the response to that question</p> <p>7 calls for you to --</p> <p>8</p> <p>9 BY MR. MANGI:</p> <p>10 Q. I will modify the question. Other than</p> <p>11 conversations with counsel, how did you prepare for</p> <p>12 your deposition here today?</p> <p>13 A. Only the preparation of that document that</p> <p>14 indicated percentage of methodologies.</p> <p>15 Q. Okay. You prepared that document, did</p> <p>16 you?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Could you hand me that document, please.</p> <p>19 And that's the document that was previously marked</p> <p>20 as Exhibit Lemke 001 to the deposition today?</p> <p>21 A. That's correct.</p> <p>22 Q. With your permission, since we only have</p>	<p>176</p> <p>1 relation to drugs administered in office; is that a</p> <p>2 fair statement?</p> <p>3 A. This was probably better titled Basis than</p> <p>4 Methodology. These individual items underneath the</p> <p>5 methodology heading are more the basis for the fee</p> <p>6 schedule than they are the methodology. Methodology</p> <p>7 denotes a percent of something subtracted from</p> <p>8 something else, added to something else is more a</p> <p>9 methodology. These are the basis that was used to</p> <p>10 create fee schedules. So.</p> <p>11 Q. You're quite right. So there's a basis,</p> <p>12 and then there may be negotiation related to that</p> <p>13 basis, right?</p> <p>14 A. That's -- yes.</p> <p>15 Q. Now, if you could follow along the first</p> <p>16 of these, the first entry in the methodology column</p> <p>17 is Medicare or percentage of Medicare?</p> <p>18 A. Yes.</p> <p>19 Q. And then we have a column entitled Allowed</p> <p>20 Amount that has a dollar sum next to it?</p> <p>21 A. Yes.</p> <p>22 Q. What is that allowed amount?</p>
<p>175</p> <p>1 one copy, I would like to come over and point out a</p> <p>2 few aspects of it to you.</p> <p>3 MR. ST. PHILLIP: Sure.</p> <p>4 BY MR. MANGI:</p> <p>5 Q. Looking now at Exhibit Lemke 001, the first</p> <p>6 column is entitled Methodology. What is contained within</p> <p>7 that column?</p> <p>8 A. Those are -- what's another word for</p> <p>9 methodology? Those are -- indicate the basis on</p> <p>10 which Humana fee schedules have been and continue to</p> <p>11 be created.</p> <p>12 Q. So these are the different methodologies</p> <p>13 that Humana uses in reimbursing providers; is that a</p> <p>14 fair statement?</p> <p>15 MR. ST. PHILLIP: Let's go off the record</p> <p>16 for a second.</p> <p>17 (OFF-THE-RECORD DISCUSSION.)</p> <p>18 MR. MANGI: I'll just read back the</p> <p>19 question before the break, which was --</p> <p>20 BY MR. MANGI:</p> <p>21 Q. So these are the different methodologies</p> <p>22 that Humana uses when reimbursing providers in</p>	<p>177</p> <p>1 A. Allowed amount is the accumulated or the</p> <p>2 amount that is stated in a fee schedule.</p> <p>3 Q. Well, as it relates to this column, is</p> <p>4 that the amount that Humana has paid in reimbursing</p> <p>5 for claims in a particular time period?</p> <p>6 MR. ST. PHILLIP: Objection to form.</p> <p>7 THE WITNESS: It is the amount that is</p> <p>8 allowable under a contracted fee schedule with</p> <p>9 providers in a certain time period.</p> <p>10 BY MR. MANGI:</p> <p>11 Q. Well, the first --</p> <p>12 A. It's not paid, it is the allowed amount.</p> <p>13 Q. The first column that pertains to a list</p> <p>14 of a particular dollar sum, like 40,000 -- actually</p> <p>15 it's 40,802,735?</p> <p>16 A. Right.</p> <p>17 Q. What does that amount represent?</p> <p>18 A. That represents the allowed amount of a</p> <p>19 certain segment of claims for a time period that the</p> <p>20 amount that is allowed before benefits are applied</p> <p>21 to a claim. That has come from a Medicare or a</p> <p>22 percent of Medicare fee schedule.</p>

46 (Pages 178 to 181)

178

1 Q. Right. So my question is, what is the
2 time frame?

3 A. Oh, boy. It would have been 12 months.
4 Did not indicate on the document as to which 12
5 months, but it would have been a consecutive 12
6 months between 2003, 2004.

7 Q. Okay.

8 A. As close as I can give you.

9 Q. And the percentage of total, is that
10 percentage of the total amount reimbursed or the
11 total number of fee schedules?

12 MR. ST. PHILLIP: Objection. Go ahead.

13 THE WITNESS: The first percentage column
14 here is simply a simple percent of one basis divided
15 by the total on the document.

16 BY MR. MANGI:

17 Q. So in other words, \$40,800,000 and change
18 would represent 45.3 percent of the total amounts
19 that Humana reimbursed during the 12-month period at
20 issue?

21 MR. ST. PHILLIP: Objection.

22 THE WITNESS: No. Because this does

179

1 not -- the total does not represent 100 percent of
2 Humana's business.

3 BY MR. MANGI:

4 Q. Okay. What aspects of Humana's business
5 are not reflected on this document?

6 A. I cannot answer that.

7 Q. Is that because you don't know the answer?

8 A. I do not know the answer.

9 Q. Well, is this intended to be a
10 comprehensive summary of the bases under the common
11 methodology?

12 A. No, it's designed to be an approximation
13 of the types of fee schedules and the basis of those
14 fee schedules that Humana currently has under
15 contract with providers.

16 Q. Okay. And all reimbursement, certainly as
17 far as it involves drugs, is by reference to a fee
18 schedule, correct?

19 MR. ST. PHILLIP: Objection.

20 BY MR. MANGI:

21 Q. Or the usual -- or the billed charges?

22 MR. ST. PHILLIP: Are we just talking

180

1 about providers?

2 MR. MANGI: Right.

3 THE WITNESS: Yes.

4 BY MR. MANGI:

5 Q. Okay. So my question is, if this amount
6 under Allowed Amounts is not the sum total of
7 reimbursements to providers insofar as drugs are
8 involved, what else is there that's missing from
9 this table?

10 A. Oh, there's a whole host of things
11 missing. This again was to be a representative
12 sample of our types of fee schedules. The dollar
13 amounts that are shown on here include the entire
14 range of services and drugs and supplies and
15 everything else that has been billed to Humana from
16 providers. This is --

17 Q. Okay. So in terms of the total
18 reimbursement to providers, would it be fair to say
19 that reimbursement pursuant to a Medicare or
20 percentage of Medicare based contract constitutes
21 45.3 percent of the total reimbursements?

22 MR. ST. PHILLIP: Objection.

181

1 THE WITNESS: No.

2 MR. ST. PHILLIP: Let me confer for just a
3 second.

4 MR. MANGI: Sure.

5 (WITNESS CONFERS WITH COUNSEL.)

6 MR. MANGI: The witness has just conferred
7 with counsel. Would you like to clarify anything
8 based on that conversation?

9 THE WITNESS: I just want to clarify that
10 on this document, the allowed amount is what is
11 commonly known as the maximum allowable fee and is
12 not the paid amount.

13 BY MR. MANGI:

14 Q. Okay. So you don't know whether the
15 amount that was actually reimbursed was the maximum
16 allowed amount or was something less than that which
17 the physician may have billed?

18 A. That's correct.

19 Q. But the percentage, 45.3 is the percentage
20 of the total maximum allowed amount that is
21 calculated by reference to the Medicare based
22 methodologies?

<p>182</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Good, thank you. The next column</p> <p>3 is Number of Schedules, yes?</p> <p>4 A. Yes.</p> <p>5 Q. And is that the number of schedules that</p> <p>6 use the bases or the methodology referred to in</p> <p>7 column one?</p> <p>8 A. Yes.</p> <p>9 Q. And the next column that doesn't have a</p> <p>10 heading, is that expressed those number of schedules</p> <p>11 as a percentage of the total schedules?</p> <p>12 A. Yes.</p> <p>13 Q. And in terms of the bases or</p> <p>14 methodologies, first is Medicare, percentage of</p> <p>15 Medicare; then there's Medicare based or percentage</p> <p>16 of Medicare fee. What's the difference between</p> <p>17 those first two bases?</p> <p>18 A. The Medicare or percent of Medicare is</p> <p>19 current Medicare.</p> <p>20 Q. Right.</p> <p>21 A. The Medicare based could be any year prior</p> <p>22 to the current Medicare year.</p>	<p>184</p> <p>1 A. That's correct.</p> <p>2 Q. The next row is HIAA direct. What does</p> <p>3 that refer to?</p> <p>4 A. That again is HIAA, which is a series of</p> <p>5 fee schedules produced by HIAA that represent</p> <p>6 physician charges by regions of the country. So</p> <p>7 it's a third party produced fee schedule.</p> <p>8 Q. Do you know how they generate that fee</p> <p>9 schedule, what it's based on?</p> <p>10 A. It's based on physician claims.</p> <p>11 Q. Is it based on physicians' customary</p> <p>12 charges?</p> <p>13 A. Yes.</p> <p>14 Q. And that represents -- let's see, what</p> <p>15 percentage? About 3.3 percent?</p> <p>16 A. In total, yes.</p> <p>17 Q. The lease schedules are the ones we</p> <p>18 referred to earlier, where you're leasing a network,</p> <p>19 and you don't know what the basis is for the</p> <p>20 methodology, right?</p> <p>21 MR. ST. PHILLIP: Objection.</p> <p>22 THE WITNESS: That's correct.</p>
<p>183</p> <p>1 Q. Okay. Would those be old contracts that</p> <p>2 are still in effect?</p> <p>3 A. Yes.</p> <p>4 Q. And would those also include contracts</p> <p>5 where providers put forth an old fee schedule as a</p> <p>6 basis for reimbursement?</p> <p>7 A. Yes.</p> <p>8 Q. The third column is Average Wholesale</p> <p>9 Price Updated Quarterly. Is that the alternative</p> <p>10 AWP based methodology we discussed this morning?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. The next column is Medicare</p> <p>13 based -- I'm sorry, the next row is Medicare based</p> <p>14 frozen. What does that refer to?</p> <p>15 A. Those are fee schedules that are -- can be</p> <p>16 current or can be past Medicare based fee schedules,</p> <p>17 that have -- that do not, as we call, do not float</p> <p>18 with Medicare.</p> <p>19 Q. So if Medicare were to change its</p> <p>20 methodology, or indeed if the AWP's for drugs were to</p> <p>21 change, the amounts paid pursuant to the contract</p> <p>22 would not, because they're frozen?</p>	<p>185</p> <p>1 BY MR. MANGI:</p> <p>2 Q. Then there's HIAA based, where the HIAA</p> <p>3 fee schedule forms a basis for negotiation; is that</p> <p>4 correct?</p> <p>5 A. Well, ultimately is the base for the fee</p> <p>6 schedule that is there. Clarifying the difference</p> <p>7 between HIAA direct and HIAA based, HIAA direct is</p> <p>8 the fee schedule, the HIAA fee schedule as is and</p> <p>9 currently is, and as it changes. HIAA based is</p> <p>10 either current or sometime in the past, the HIAA fee</p> <p>11 schedule was used to establish or as a base for that</p> <p>12 fee schedule. So --</p> <p>13 Q. So they could -- I'm sorry, were you done?</p> <p>14 A. Yes.</p> <p>15 Q. So they could be -- through the process of</p> <p>16 negotiation, the parties could agree upon a certain</p> <p>17 percentage of the HIAA fee schedule?</p> <p>18 A. That's correct.</p> <p>19 Q. Now, direct contract negotiation, is that</p> <p>20 referring to specific providers' specific fee</p> <p>21 schedules along the lines of one we discussed</p> <p>22 earlier where provider provides a fee schedule to</p>

48 (Pages 186 to 189)

<p>186</p> <p>1 Humana that forms a basis for reimbursement?</p> <p>2 A. Yes.</p> <p>3 Q. And then we have Medicaid or percentage of</p> <p>4 Medicaid. Is that referring to state specific</p> <p>5 schedules that reference a percentage of what</p> <p>6 Medicaid is reimbursing?</p> <p>7 A. Yes.</p> <p>8 Q. And then you have "Purchased schedules,</p> <p>9 unknown method." What is that referring to?</p> <p>10 A. We've bought -- in the process of</p> <p>11 business, as we lease networks, we have purchased</p> <p>12 networks, and with those networks come fee schedules</p> <p>13 that are under our control and still in use. We</p> <p>14 purchased them, but I have and Humana has no means</p> <p>15 of determining what the method was or the basis used</p> <p>16 to create that fee schedule.</p> <p>17 Q. And contracted percent of charge, that's a</p> <p>18 percentage of what the physician charges?</p> <p>19 A. Correct.</p> <p>20 Q. Thank you. Now, there's also a</p> <p>21 handwritten note, 83 percent. What is that</p> <p>22 referring to?</p>	<p>188</p> <p>1 BY MR. MANGI:</p> <p>2 Q. Okay. Direct contract negotiation, that</p> <p>3 may or may not involve AWP; is that a fair</p> <p>4 statement?</p> <p>5 A. That's true.</p> <p>6 Q. There's no way of knowing?</p> <p>7 A. No way of knowing.</p> <p>8 Q. HIAA based or HIAA direct, that has</p> <p>9 nothing to do with AWP; is that correct?</p> <p>10 MR. ST. PHILLIP: Objection.</p> <p>11 THE WITNESS: That is correct.</p> <p>12 BY MR. MANGI:</p> <p>13 Q. And leased schedules, there's no way of</p> <p>14 knowing whether or not they have anything to do with</p> <p>15 AWP?</p> <p>16 A. That's true.</p> <p>17 Q. Okay. Does Humana have any indemnity</p> <p>18 plans today?</p> <p>19 MR. ST. PHILLIP: I'm going to object.</p> <p>20 The magistrate on November 2nd, 2004 ordered</p> <p>21 excluded Topic Number 22, which described, "Your</p> <p>22 client's relationship with your insured, including</p>
<p>187</p> <p>1 A. That must have been a quick summation of</p> <p>2 something.</p> <p>3 Q. Is that a notation you made during the</p> <p>4 deposition?</p> <p>5 A. Yes. That is not part of the original</p> <p>6 document, and nor should it be there. I didn't</p> <p>7 realize that was going to be an official document.</p> <p>8 Q. That's okay. Now, of these various bases</p> <p>9 or methodologies listed here, contracted percent of</p> <p>10 charge, that has nothing to do with AWP, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. The purchase schedules may or may</p> <p>13 not have anything to do with AWP; there's just no</p> <p>14 way of knowing?</p> <p>15 A. That is correct.</p> <p>16 Q. Medicaid or percentage of Medicaid, does</p> <p>17 that have a relationship to AWP?</p> <p>18 MR. ST. PHILLIP: Objection.</p> <p>19 THE WITNESS: My knowledge of state</p> <p>20 Medicaid fee schedules is very limited, and I do not</p> <p>21 know what the states use to establish a fee for</p> <p>22 their fee schedules.</p>	<p>189</p> <p>1 all methodologies by which you billed your insured</p> <p>2 directly or indirectly for pharmaceuticals or</p> <p>3 pharmaceutical dispensing and administration</p> <p>4 services." We believe the types and nature of plans</p> <p>5 are within that exclusion, and therefore Humana</p> <p>6 doesn't consent to have Mister Lemke testify</p> <p>7 concerning that topic. We'll preserve our rights</p> <p>8 under the objection and allow Mister Lemke to answer</p> <p>9 your question.</p> <p>10 MR. MANGI: The question is actually not</p> <p>11 relevant to that category at all. It is relevant to</p> <p>12 others.</p> <p>13 BY MR. MANGI:</p> <p>14 Q. But could you answer the question, please.</p> <p>15 A. Only to the extent that I see that line of</p> <p>16 business type indicated on claims.</p> <p>17 Q. In those cases, would a member pay the</p> <p>18 physician their bill and then submit an invoice to</p> <p>19 Humana for reimbursement?</p> <p>20 A. I cannot answer that, because I'm not</p> <p>21 totally educated on the reimbursement process and</p> <p>22 indemnity plan.</p>

<p style="text-align: right;">190</p> <p>1 Q. Does Humana receive claims only from</p> <p>2 physicians, or does it also receive them from</p> <p>3 members in relation to drugs administered in</p> <p>4 physicians' offices?</p> <p>5 A. I do not know.</p> <p>6 Q. Have you ever heard AWP referred to as</p> <p>7 "ain't what's paid"? Have you ever heard that term?</p> <p>8 A. Yes.</p> <p>9 Q. When have you heard that term, do you</p> <p>10 know?</p> <p>11 A. Very recent, and probably have not heard</p> <p>12 that term for a good five or six years since then.</p> <p>13 Q. So you heard it about five or six years</p> <p>14 ago?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall in what context you've come</p> <p>17 across that?</p> <p>18 A. Yeah, it was during a discussion with a</p> <p>19 primary care group in Sussex, New Jersey.</p> <p>20 Q. And what focused the conversation around</p> <p>21 this?</p> <p>22 A. It was a conversation around our proposed</p>	<p style="text-align: right;">192</p> <p>1 Q. Now, earlier you referred to the fact that</p> <p>2 geography alone, taken in isolation, does not</p> <p>3 explain variations in reimbursement rates, correct?</p> <p>4 MR. ST. PHILLIP: Objection.</p> <p>5 THE WITNESS: Does not totally explain.</p> <p>6 BY MR. MANGI:</p> <p>7 Q. So would it be fair to say that say --</p> <p>8 take Arizona State, for example, there's nothing</p> <p>9 peculiar about Arizona that would explain variation</p> <p>10 in rates in Arizona; is that a fair statement?</p> <p>11 A. In Arizona itself, that's true, in the</p> <p>12 fact that we rely a lot on Medicare, and Medicare</p> <p>13 sees the costs in Arizona differently than it sees</p> <p>14 the costs in other parts of the country.</p> <p>15 Q. Now, we spoke earlier about negotiation</p> <p>16 and starting points for negotiation. Do you recall</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. And I believe you testified your view that</p> <p>20 the starting point of a negotiation, whether it's</p> <p>21 higher or lower can affect the end outcome?</p> <p>22 A. I believe that to be true.</p>
<p style="text-align: right;">191</p> <p>1 contract with a MSO, management services</p> <p>2 organization, and relating to a portion of the</p> <p>3 contract that related to percent of premium</p> <p>4 capitation.</p> <p>5 Q. In what context did someone raise or refer</p> <p>6 to AWP as "ain't what's paid"?</p> <p>7 A. Boy. I believe it was at the time when</p> <p>8 there was discussion about what was included in</p> <p>9 administering a percent of premium contract, and how</p> <p>10 that related to the individual physicians and their</p> <p>11 risk, especially on the pharmacy side.</p> <p>12 Q. And what did you understand that reference</p> <p>13 to mean when someone referred to AWP as "ain't</p> <p>14 what's paid"?</p> <p>15 A. That AWP was not an adequate reimbursement</p> <p>16 level.</p> <p>17 Q. Did you understand the use of that term to</p> <p>18 be referring to the fact that AWP is not what's paid</p> <p>19 to acquire drugs?</p> <p>20 MR. ST. PHILLIP: Objection.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. MANGI:</p>	<p style="text-align: right;">193</p> <p>1 Q. Okay. What's your basis for that</p> <p>2 impression?</p> <p>3 A. Past negotiations.</p> <p>4 Q. Are those negotiations that you have</p> <p>5 conducted yourself?</p> <p>6 A. Yes.</p> <p>7 Q. In what context have you been involved in</p> <p>8 contract negotiations?</p> <p>9 A. From the provider side previously to my</p> <p>10 employment with Humana.</p> <p>11 Q. So as I recall your testimony, I believe</p> <p>12 you said it was a psychological factor that could</p> <p>13 affect where you ended up?</p> <p>14 MR. ST. PHILLIP: Objection.</p> <p>15 THE WITNESS: Yes, I believe I said that.</p> <p>16 BY MR. MANGI:</p> <p>17 Q. We can agree, though, that as a matter of</p> <p>18 theory, you can start -- you can take a higher</p> <p>19 starting point or a lower starting point and you can</p> <p>20 negotiate either amounts off the higher point or in</p> <p>21 addition to the lower point, you can arrive at the</p> <p>22 same end result, correct?</p>

50 (Pages 194 to 197)

<p>1 MR. ST. PHILLIP: Objection. To the 2 extent it's based on facts, you can testify on 3 facts. 4 THE WITNESS: It's always possible. 5 BY MR. MANGI: 6 Q. And indeed, in a negotiation process, if 7 Humana has a firm sense of where it wants the 8 negotiation to end up, it could arrive at that point 9 by negotiating down from a higher starting point and 10 negotiating up from a lower starting point, correct? 11 MR. ST. PHILLIP: Objection. 12 THE WITNESS: Yes, Humana could. 13 BY MR. MANGI: 14 Q. So indeed, regardless of the benchmark 15 that's used, Humana could, if it so chose, arrive at 16 the same end result by negotiating down from the 17 higher benchmark or up from a lower benchmark, 18 right? 19 A. It could attempt to. 20 Q. In preparation for your deposition today, 21 did you have conversations with anyone other than 22 your counsel?</p>	<p>194</p> <p>1 MR. ST. PHILLIP: You've got to testify, 2 not me. If you don't know, just say you don't know. 3 BY MR. MANGI: 4 Q. Are you referring -- is it your 5 understanding that Humana serves as a Medicaid 6 carrier? 7 A. A Medicaid carrier? 8 Q. No, a Medicare carrier. 9 A. To my knowledge, Humana doesn't serve as a 10 Medicare carrier. 11 Q. I'm just trying to understand what you're 12 referring to when you mean, "government side of the 13 business," what sort of -- 14 A. Tricare. 15 MR. MANGI: Okay. That's all I have for 16 Mister Lemke. Ed, do you have questions? 17 MR. NOTARGIACOMO: I've got a few minutes' 18 worth of questions. 19 MR. ST. PHILLIP: Can we talk with the 20 witness for a little bit? 21 (A SHORT BREAK WAS TAKEN.) 22 *****</p> <p>196</p>
<p>1 A. Yes. 2 Q. Who else did you speak to? 3 A. Suzanne -- 4 THE WITNESS: What was her last name, 5 Brad? 6 MR. COHEN: Oh, Corum. 7 THE WITNESS: Suzanne Corum. 8 BY MR. MANGI: 9 Q. Who is Ms. Corum? 10 A. Humana's associate that is somewhat -- or 11 is associated with the government side of our 12 business. 13 Q. What did you discuss with Ms. Corum in 14 relation to your deposition? 15 A. Just briefly went over what that segment 16 of the business did with -- in regard to 17 reimbursement or payment of drugs. 18 Q. And by "the government side of the 19 business," what are you referring to there? 20 A. That's all I know it by. 21 Q. Well -- 22 A. HMHS is the acronym.</p> <p>195</p>	<p>1 2 EXAMINATION 3 BY MR. NOTARGIACOMO: 4 Q. Mister Lemke, my name is Ed Notargiacomo. 5 As I said earlier today, I represent the plaintiffs 6 in this litigation, or at least the class plaintiffs 7 in this litigation, and I just have a few follow-up 8 questions for you this afternoon. If you don't 9 understand a question, please let me know and I'll 10 rephrase it or repeat it. 11 Do you remember -- well, is it fair to say 12 Mister Manji asked you a series of questions today 13 about how Humana pays providers for drugs injected 14 in their offices? 15 A. Yes. 16 Q. And is it fair to say that the amount 17 Humana pays providers who inject drugs into a Humana 18 insured patient, those amounts are based upon more 19 than simply the price for the drug itself? 20 A. That is correct. 21 Q. In fact, Humana also reimburses physicians 22 for the cost of physically administering the drug,</p> <p>197</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

51 (Pages 198 to 201)

<p style="text-align: right;">198</p> <p>1 is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And is it fair to say that the AWP or</p> <p>4 average wholesale price has generally been one</p> <p>5 component in determining the amount that Humana pays</p> <p>6 a provider for services which include the injection</p> <p>7 of drugs?</p> <p>8 MR. MANGI: Object to the form, and to the</p> <p>9 extent it doesn't account for the various other</p> <p>10 types of methodologies discussed.</p> <p>11 A. That is a true statement, it is one of the</p> <p>12 components.</p> <p>13 Q. And do you remember or recall that when</p> <p>14 Mister Mangi asked you if it was fair to state that</p> <p>15 Humana's general aim is to get the best deal it can</p> <p>16 while maintaining an adequate provider network, do</p> <p>17 you remember what your answer to that question was?</p> <p>18 A. I believe it was that that is, you know,</p> <p>19 the goal of Humana.</p> <p>20 Q. Is it equally fair to say that Humana also</p> <p>21 expects and doctors in its network are to make a</p> <p>22 living primarily by providing medical treatments to</p>	<p style="text-align: right;">200</p> <p>1 understanding as a general matter that the average</p> <p>2 wholesale price, the AWP, is supposed to reflect a</p> <p>3 benchmark of the approximate prices that a drug is</p> <p>4 sold to providers for?</p> <p>5 A. That is correct.</p> <p>6 Q. So is it fair to say that it's not</p> <p>7 irrelevant to Humana if provider reimbursement</p> <p>8 formulas contain AWP that faultily exaggerate prices</p> <p>9 at which doctors buy the drug, is that true?</p> <p>10 MR. MANGI: Object to the form of the</p> <p>11 question, and also to the extent Mister Notargiacomo</p> <p>12 is misrepresenting plaintiff's position in this</p> <p>13 litigation.</p> <p>14 BY MR. NOTARGIACOMO:</p> <p>15 Q. If you can still answer the question, I</p> <p>16 can repeat it if you need me to.</p> <p>17 A. Yes, would you please?</p> <p>18 Q. Sure. Is it fair to state it's not</p> <p>19 irrelevant to Humana if provider reimbursement</p> <p>20 formulas contain AWP that falsely exaggerates prices</p> <p>21 at which the doctors buy the drug?</p> <p>22 MR. MANGI: Same objection.</p>
<p style="text-align: right;">199</p> <p>1 patients and Humana enrollees and not put a large</p> <p>2 mark up on prescription drugs?</p> <p>3 MR. MANGI: Object to the form.</p> <p>4 A. Yes, I agree with that statement.</p> <p>5 Q. So is it fair to say that it's your</p> <p>6 understanding as a general matter that the amount</p> <p>7 Humana pays providers who administer prescription</p> <p>8 drugs is intended to reasonably compensate the</p> <p>9 doctors for their medical services and reimburse</p> <p>10 them for the appropriate costs of the drug itself?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. And is it your understanding as a general</p> <p>13 matter that AWP, which you I think referred to as a,</p> <p>14 quote, gold standard, is to reflect a benchmark of</p> <p>15 the approximate price that a drug is sold to the</p> <p>16 providers?</p> <p>17 MR. MANGI: Object to the form,</p> <p>18 mischaracterizes the testimony.</p> <p>19 A. Yes.</p> <p>20 Q. I'm sorry, I sort of spoke over you. Let</p> <p>21 me repeat the question and you can repeat your</p> <p>22 answer. I'm not sure I heard it. Is it your</p>	<p style="text-align: right;">201</p> <p>1 A. It is greatly relevant.</p> <p>2 Q. Can you explain to me why it's relevant?</p> <p>3 MR. MANGI: Same objection.</p> <p>4 A. The reason it is relevant is because that</p> <p>5 is the basis on which we establish our cost of the</p> <p>6 drug to the provider.</p> <p>7 Q. So that if the AWP is falsely exaggerated,</p> <p>8 the payment by Humana to the physicians will be</p> <p>9 larger than it otherwise would be?</p> <p>10 MR. MANGI: Same objections.</p> <p>11 A. That is correct.</p> <p>12 MR. NOTARGIACOMO: I have no other</p> <p>13 questions.</p> <p>14 MR. MANGI: A clarification. Ed, for the</p> <p>15 record, are plaintiffs now reverting to the position</p> <p>16 that AWP should be an average of actual acquisition</p> <p>17 costs?</p> <p>18 MR. NOTARGIACOMO: I'm not changing</p> <p>19 plaintiff's position or anything, I was simply</p> <p>20 asking the witness some questions.</p> <p>21 MR. MANGI: Okay, because I was about to</p> <p>22 put that in a brief. Fair enough.</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

52 (Pages 202 to 205)

<p style="text-align: right;">202</p> <p>1 MR. ST. PHILLIP: I think Mister Cohen may 2 have a couple of questions. 3 MR. COHEN: Let me just add some 4 questions. 5 ***** 6 EXAMINATION 7 BY MR. COHEN: 8 Q. Mister Mangi asked you about what he 9 called the competitive dynamic when he was asking 10 you about different amounts Humana pays to different 11 providers for services in which the administration 12 of the same drug is involved. Do you recall that? 13 A. Yes. 14 Q. Now, this competitive dynamic, is it 15 reasonable to assume that the competitive dynamic 16 results in -- compels Humana to generally pay say an 17 oncologist in Chicago more for the administration of 18 Zoladex than it might compel them to pay a general 19 practitioner in North Carolina? 20 A. Yes. 21 Q. And does that have anything to do with -- 22 that differential, does that have anything to do</p>	<p style="text-align: right;">204</p> <p>1 of clear hurdles of common negotiations across the 2 board with 300,000 doctors? 3 A. Yes. 4 Q. Is AWP one of those common benchmarks? 5 A. Yes, it is. 6 Q. Mister Mangi asked you certain -- he took 7 you through certain pricing methodologies on Exhibit 8 Lemke 001. You have Lemke 1 in front of you. Do you 9 recall going through that with Mister Mangi? 10 A. Yes. 11 Q. And do you recall Mister Mangi asking you 12 item by item if this pricing methodology or that 13 pricing methodology had any relationship to AWP. Do 14 you recall him asking you that? Did line item three 15 have any -- 16 A. Yes, yes. 17 Q. And in some of those instances, you 18 answered no. Do you recall that? 19 A. Yes. 20 Q. By so answering no, did you mean to 21 suggest that AWP played no role in how Humana 22 determined what it was willing to pay when it</p>
<p style="text-align: right;">203</p> <p>1 with the cost of the drug? 2 A. No, it's not dependent on the cost of the 3 drug. 4 Q. Does it have to do with the factors of 5 trying to retain the services of the Chicago 6 oncologist who may be more expensive than the GP in 7 North Carolina? 8 A. Yes. 9 Q. And when there are variations in what you 10 pay one doctor over another for services which 11 include the administration of Zoladex or Procrit, 12 one of Mister Mangi's clients' drugs, does it -- is 13 generally the difference result from competitive 14 dynamics apart from the cost of the drug? 15 A. Yes. 16 Q. How many providers does Humana -- how many 17 doctors does Humana contract with? 18 A. Somewhere near 330,000. 19 Q. Is it feasible to negotiate contracts one 20 on one with each of those 300,000 doctors? 21 A. No, it's not economically feasible. 22 Q. So do you need certain benchmarks to sort</p>	<p style="text-align: right;">205</p> <p>1 adopted any particular methodology? 2 A. No. The answer to that was not that it 3 doesn't play a role, is that we have no knowledge of 4 what role, if any, it plays in it. So for those -- 5 for instance, contracted percent of charge. In 6 essence, a fee schedule is the physician's fee 7 schedule that we pay a percent of. They may well 8 have set their fees and charges for drugs based on 9 AWP, it's just that we are not privy to that 10 information, nor do we know that was the basis. Not 11 saying it is not the basis, we just don't have 12 knowledge of it. 13 Q. If you were looking at the contractual 14 amount you were going to pay a general practitioner 15 in North Carolina to administer Drug A and Drug B, 16 and the services entailed an office visit and an 17 injection and drug, the scheduled rate with respect 18 to Drug B was a hundred dollars more than it was for 19 Drug A, wouldn't you check the AWP as one of the 20 things you would do to try to ascertain why there 21 was such a difference? 22 MR. MANGI: Object to the form.</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

53 (Pages 206 to 209)

<p style="text-align: right;">206</p> <p>1 A. Yes, we would -- we have often and we'll</p> <p>2 continue to use AWP as a basis for judgment as to</p> <p>3 whether we believe a fee is too high.</p> <p>4 Q. Would it be relevant to your determination</p> <p>5 of how much to pay a provider if you were to learn</p> <p>6 that there was a situation whereby manufacturers</p> <p>7 were competitively exaggerating their AWP to try to</p> <p>8 get market share with that doctor at the expense of</p> <p>9 Humana?</p> <p>10 MR. MANGI: Object to the form.</p> <p>11 A. Would you repeat the question?</p> <p>12 MR. ST. PHILLIP: Read it back.</p> <p>13 (RECORD READ.)</p> <p>14 MR. MANGI: Object to the form, and also</p> <p>15 it's leading.</p> <p>16 A. Yes.</p> <p>17 Q. Hypothetically, if you were to learn, for</p> <p>18 instance, that urologists to whom you were paying</p> <p>19 \$200 for an office visit encompassing an injection</p> <p>20 of Zoladex, where you paid that same oncologist \$100</p> <p>21 for an office visit without an injection of</p> <p>22 Zoladex -- withdrawn. Hypothetically, if you</p>	<p style="text-align: right;">208</p> <p>1 MR. MANGI: Same objection, form and</p> <p>2 leading.</p> <p>3 A. Absolutely.</p> <p>4 MR. COHEN: I have no further questions.</p> <p>5 MR. MANGI: I'll have a few more.</p> <p>6 *****</p> <p>7 EXAMINATION</p> <p>8 BY MR. MANGI:</p> <p>9 Q. Now, Mister Lemke, we spent a lot of time</p> <p>10 today talking about competitive dynamics, bargaining</p> <p>11 leverage, do you remember that?</p> <p>12 A. (WITNESS MOVES HEAD UP AND DOWN.)</p> <p>13 Q. You have to answer verbally.</p> <p>14 A. Uh-huh, yes.</p> <p>15 Q. That bargaining and leverage, those issues</p> <p>16 apply, not only to a determination of what Humana</p> <p>17 will pay in relation to services, but also in</p> <p>18 relation to drugs, correct?</p> <p>19 A. In some instances, yes.</p> <p>20 Q. And that variation will explain why, in</p> <p>21 some case, the reference to the Medicare based fee</p> <p>22 schedules, Humana will be reimbursing for drugs to</p>
<p style="text-align: right;">207</p> <p>1 learned that you were paying a urologist \$500 for an</p> <p>2 office visit encompassing the injection of Zoladex,</p> <p>3 where you were only paying \$100 for an office visit</p> <p>4 that didn't encompass any injection, would it be</p> <p>5 relevant to you to know what the AWP was of the</p> <p>6 Zoladex that was being given?</p> <p>7 MR. MANGI: Object to the form, leading.</p> <p>8 A. Yes, it would, because that would -- I</p> <p>9 mean, that represents the difference between those</p> <p>10 two claims, if you will. And thereby by default is</p> <p>11 to, the only other cost involved in that encounter.</p> <p>12 So yes, we would want to know how that measures up</p> <p>13 against AWP or other standards we have.</p> <p>14 Q. And if you learned that the AWP for that</p> <p>15 injection of Zoladex was equal to -- roughly equal</p> <p>16 to the \$400 difference, would you then consider that</p> <p>17 an acceptable way to explain the difference?</p> <p>18 A. Yes.</p> <p>19 Q. And if you were to learn that, although</p> <p>20 the AWP were roughly \$400, the doctor was only</p> <p>21 paying \$100, would that affect your future pricing</p> <p>22 negotiations for that type of service?</p>	<p style="text-align: right;">209</p> <p>1 ninety percent Medicare and whereas in other cases,</p> <p>2 it will be reimbursing at a hundred twenty percent</p> <p>3 of Medicare, correct?</p> <p>4 A. In some case, yes.</p> <p>5 Q. Now, if you could turn to Exhibit Lemke 001.</p> <p>6 There it is. In relation to some of these rows</p> <p>7 under methodology, or some of these bases, AWP is a</p> <p>8 component in the reimbursement methodology, right?</p> <p>9 A. Yes.</p> <p>10 Q. For example, average wholesale price</p> <p>11 updated quarterly, AWP is clearly a part of the</p> <p>12 methodology there, correct?</p> <p>13 A. Right.</p> <p>14 Q. In relation to the other methodologies</p> <p>15 that we referenced, be they purchase schedules,</p> <p>16 contracted percentage of charge, HIAA direct, you</p> <p>17 have no way of knowing whether or not they have any</p> <p>18 relationship to AWP, correct?</p> <p>19 A. That's correct. For those types stated,</p> <p>20 those we would not necessarily know if AWP was the</p> <p>21 basis.</p> <p>22 Q. And indeed, AWP may have formed no part of</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

54 (Pages 210 to 213)

<p>1 those?</p> <p>2 A. It may or may not, that's true.</p> <p>3 Q. We spoke earlier also about how good</p> <p>4 business sense requires one to take an overall look</p> <p>5 at a contract, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Have a sense for what the bottom line is,</p> <p>8 what you're paying and what you're receiving, right?</p> <p>9 A. Yes.</p> <p>10 Q. Certainly, from a physician's perspective,</p> <p>11 if they feel they're being inadequately reimbursed</p> <p>12 in one area, they can still see as an acceptable</p> <p>13 overall contract if they're being reimbursed at a</p> <p>14 higher rate in another area, right?</p> <p>15 A. Yes.</p> <p>16 Q. For example, if they feel they're being</p> <p>17 underreimbursed for admin fees, they can still view</p> <p>18 it as an acceptable contract if they're getting</p> <p>19 higher reimbursement in relation to drugs, right?</p> <p>20 A. They may well view it that way, yes.</p> <p>21 Q. Now, Mister Notargiacomo returned to your</p> <p>22 view as to whether or not AWP represents the prices</p>	<p>1 wholesale price" and nothing else, correct?</p> <p>2 A. I responded to that that it was an</p> <p>3 estimate or close proximity, I'm not quite sure the</p> <p>4 term I used, represented the average price that</p> <p>5 providers pay for drugs, yes.</p> <p>6 Q. But you based that impression solely upon</p> <p>7 the terms of that phrase.</p> <p>8 A. Not solely, no.</p> <p>9 Q. Okay. What else do you base it on?</p> <p>10 A. Based on the fact that there's always --</p> <p>11 well, an average is an average which means that</p> <p>12 there's always going to be instances where you're</p> <p>13 going to pay less than the average because somebody</p> <p>14 else is paying more than the average. Depending on</p> <p>15 how that average was derived, I mean there is a</p> <p>16 number of things going in it, but also just being in</p> <p>17 the business world and in the sense one could never</p> <p>18 say that that is an absolute reflection of -- any</p> <p>19 average is an absolute reflection of what's actually</p> <p>20 going on in the market. But I truly, you know, I</p> <p>21 believe that the average wholesale price did</p> <p>22 approximate what was being paid out and what was</p>
<p>1 at which drugs are acquired.</p> <p>2 MR. COHEN: Objection, that</p> <p>3 mischaracterizes the question. I heard the word</p> <p>4 approximate.</p> <p>5 MR. MANGI: In any event --</p> <p>6 MR. COHEN: Well, rephrase your question.</p> <p>7 MR. MANGI: Your objection is noted and</p> <p>8 that's fine, I'll rephrase the question.</p> <p>9 BY MR. MANGI:</p> <p>10 Q. Do I recall correctly, that you testified</p> <p>11 earlier today that you don't know at what price</p> <p>12 providers acquire drugs, is that correct?</p> <p>13 A. The actual price at which providers</p> <p>14 acquire drugs, no, I do not know.</p> <p>15 Q. And I believe you also testified earlier</p> <p>16 today that you don't know for a fact whether or not</p> <p>17 the price providers pay to acquire drugs is AWP or</p> <p>18 is something else entirely.</p> <p>19 A. For a fact, I do not know.</p> <p>20 Q. Okay. And your response to Mister</p> <p>21 Notargiacomo's question was based simply on your</p> <p>22 personal interpretation of the words "average</p>	<p>1 being paid for drugs by providers, yes.</p> <p>2 Q. Okay. Based on your business experience</p> <p>3 and leaving aside your average may or may not</p> <p>4 conote, are you aware of any cases, even one case,</p> <p>5 where you know for a fact the provider acquired</p> <p>6 drugs at average wholesale price or even something</p> <p>7 close to average wholesale price?</p> <p>8 A. No, only because I have not been privy to</p> <p>9 detailed provider, you know, documentation or the</p> <p>10 financial records that would give me that indication</p> <p>11 or that knowledge.</p> <p>12 Q. So given that you're not privy to that</p> <p>13 knowledge in your business sense again, you're</p> <p>14 relying exclusively on the words "average wholesale</p> <p>15 price," correct?</p> <p>16 MR. ST. PHILLIP: Objection.</p> <p>17 A. Well, not totally. Because one of the</p> <p>18 other common senses in business is that in this</p> <p>19 particular instance, if a provider accepts AWP, out</p> <p>20 of the box, they at least are saying that it covers</p> <p>21 their costs.</p> <p>22 Q. Okay.</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

55 (Pages 214 to 217)

<p style="text-align: right;">214</p> <p>1 A. So from the inference that AWP does not 2 represent less than what it is costing them, one can 3 infer that AWP does cover their costs. 4 Q. Okay. So that's a slightly different 5 point. So the point you're making there is that the 6 amounts that physicians pay to acquire drugs, is 7 something less than AWP. That's your understanding, 8 correct? 9 MR. ST. PHILLIP: Objection. 10 A. No, what I said was it at least covers 11 their cost. 12 Q. Right. And for it to cover their costs, 13 their costs would have to be less than AWP, right? 14 A. At. It wouldn't necessarily have to be 15 less than. 16 Q. Okay. There are physicians who Humana 17 reimburses at ninety percent of Medicare, correct? 18 A. Yes. 19 Q. And that's ninety percent of 20 eighty-five percent of the AWP, correct? 21 A. Yes, in some cases. 22 Q. So in those instances, you understand</p>	<p style="text-align: right;">216</p> <p>1 eighty-five percent of AWP, then you assume that 2 they're acquiring drugs at an amount less than that? 3 A. No. I would probably assume in those 4 situations that it is such a small part of their 5 business that it's not a bank breaker and they're 6 picking it up someplace else in negotiation of the 7 fee schedule. 8 Q. And you're basing that upon the words 9 average wholesale price and upon the business 10 experience that you've just described. 11 Q. Correct? 12 A. In part, yes. 13 Q. What else are you relying on? 14 A. When you get into contract negotiations 15 and fee negotiations, there are so many variables 16 out there that one cannot say definitely without 17 looking at a very, very specific negotiation, a 18 very, very specific provider and a fee schedule, to 19 definitively answer any of the questions you have in 20 regard to what does AWP mean to me or the provider. 21 Q. Okay. And with regard to those specific 22 transactions and individual providers, you're not</p>
<p style="text-align: right;">215</p> <p>1 providers would be acquiring drugs at less than that 2 amount, right? 3 A. That's correct. 4 Q. Okay. So you certainly are aware that at 5 least some physicians are acquiring drugs at amounts 6 substantially below AWP itself? 7 A. No. 8 MR. ST. PHILLIP: Objection, 9 argumentative. 10 Q. Didn't you just say that you're aware that 11 they are acquiring drugs at an amount less than 12 ninety percent of eighty-five percent of AWP? 13 A. No. I'm aware of the fact that we are 14 paying them for drugs at that rate. 15 Q. Okay. 16 A. Not what their cost is. 17 Q. Okay. Wasn't your testimony just now that 18 you understood that they were being reimbursed at an 19 amount greater than what they paid to acquire drugs? 20 A. No. I said I assume that in the fact that 21 they accepted AWP as a reimbursement level. 22 Q. And if they accept ninety percent of</p>	<p style="text-align: right;">217</p> <p>1 aware of any provider in any specific case paying 2 AWP to acquire a drug, as a fact, correct? 3 MR. ST. PHILLIP: Any of the 330,000 4 contract negotiations? 5 MR. MANGI: Correct, that's exactly right. 6 A. I do not know of one absolutely fitting 7 that description, no. 8 Q. Have you heard of one fitting that 9 description? What do you mean by absolutely? 10 MR. ST. PHILLIP: It's argumentative. 11 Q. No, I'm just trying to understand what you 12 mean. 13 A. Ninety-nine-point nine percent of the 14 contracts and negotiations do not get down to an 15 individual drug. We are talking in excess of 300 to 16 400 J/Codes, not addressed individually at a time. 17 So to answer that question, you would have to be 18 looking at a specific drug for a specific provider 19 for a specific time on a specific contract and 20 getting to that level of detail, no, I could not say 21 as though I know that situation exists. 22 Q. And the reason you don't get down to</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

56 (Pages 218 to 221)

<p style="text-align: right;">218</p> <p>1 individual drugs and individual negotiations with 2 these 330,000 providers, is because it wouldn't be 3 practical to do so, right? 4 A. That's correct. 5 Q. There are a lot of drugs out there and a 6 lot of providers out there and you couldn't 7 negotiate each drug with each provider, right? 8 A. Correct. 9 Q. Okay. So instead, you utilize AWP as a 10 benchmark that enables you to have a practical 11 system of setting reimbursements, right? 12 A. Using AWP, that gives us a level of -- 13 that gives us a level of confidence that we are at 14 least not grossly overpaying. 15 Q. Okay. So indeed if you were aware of or 16 learn of the fact that a provider, one specific 17 provider or providers were getting rebates from 18 manufacturers on specific drugs, that wouldn't 19 change the reimbursement amounts in the contract 20 because you don't get down to a drug by drug level, 21 isn't that correct? 22 A. If a contractor became aware of a specific</p>	<p style="text-align: right;">220</p> <p>1 competitively sensitive information. 2 MR. NOTARGIACOMO: Can you speak up? I'm 3 having trouble hearing. 4 MR. ST. PHILLIP: Also, Ed, could you turn 5 down your microphone? Could you read that back. 6 (RECORD READ.) 7 MR. MANGI: Upon what time period are you 8 going to allow the witness to answer questions? 9 MR. ST. PHILLIP: I'm going to allow him 10 to answer questions to anything except for what's 11 happening now. 12 MR. MANGI: Okay, so yesterday? I mean, 13 give me a cut off time. 14 MR. ST. PHILLIP: The current strategy, 15 his current strategy. 16 Q. Right up until the current strategy, 17 whatever that means, is it fair to say that Humana 18 has never changed its reimbursement methodology in 19 the manner that you describe? 20 A. I can't attest to that. Never? 21 Q. Are you aware of Humana having changed its 22 methodology to that effect?</p>
<p style="text-align: right;">219</p> <p>1 provider and had that detailed information, I am 2 relatively assured that that information would be 3 used to negotiate with that provider for a lower 4 cost on drugs. 5 Q. Okay. And indeed -- well, if that were in 6 one individual case, perhaps that's true. But if 7 Humana were to become aware that all providers were 8 getting manufacturer rebates on a given basket of 9 drugs, would it then do line item negotiations with 10 respect to each of those drugs with all their 11 providers? 12 MR. ST. PHILLIP: Objection. 13 A. I would assume that Humana would approach 14 that as it approaches it now, and that in looking at 15 establishing a new standard or a new basis, for 16 future negotiation of drug costs. 17 Q. But it hasn't done that, to date, correct? 18 MR. ST. PHILLIP: Objection. To the 19 extent that the question calls for you to testify 20 about what your current contracting strategies are, 21 I'm going to instruct you not to answer and to move 22 for a protective order because that contains</p>	<p style="text-align: right;">221</p> <p>1 A. You're implying that there is a single 2 methodology which there is not so I cannot answer 3 that question. 4 Q. My question is are you aware of any 5 instances where Humana has done a line item change 6 across all its fee schedules to account for 7 knowledge of manufacturer rebates to providers in 8 relation to particular drugs? 9 A. I'm not aware of any. 10 Q. Okay. Has -- and indeed Humana to date, 11 other than some of the contracts we looked at, has 12 not to your knowledge sought to gain information 13 about providers' acquisition costs for drugs, 14 correct? 15 MR. ST. PHILLIP: Objection. 16 A. I'm not aware of any. 17 Q. And to the best of your knowledge, Humana 18 never adjusted its fee schedules to account for the 19 substantial discounts off AWP that constituted the 20 acquisition costs referenced in the OIG reports we 21 looked at, correct? 22 MR. ST. PHILLIP: Objection. To the</p>

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

57 (Pages 222 to 224)

<p style="text-align: right;">222</p> <p>1 extent that you're going to talk about the OIG</p> <p>2 reports, I would reiterate my objections to topic</p> <p>3 number 24, which was excluded by Magistrate Judge</p> <p>4 Bowler.</p> <p>5 MR. MANGI: Same response you've given</p> <p>6 many times today.</p> <p>7 Q. But you can answer that question. Would</p> <p>8 you like it read back?</p> <p>9 A. Yes, please.</p> <p>10 (RECORD READ.)</p> <p>11 A. I can never say never.</p> <p>12 Q. To the best of your knowledge?</p> <p>13 A. To the best of my knowledge, they have</p> <p>14 not.</p> <p>15 Q. Okay. Now, Mister Notargiacomo also asked</p> <p>16 you questions about exaggerated AWP's or inflated</p> <p>17 AWP's. When you responded to those questions, were</p> <p>18 you relying upon your interpretation of average</p> <p>19 wholesale price using the actual meanings of those</p> <p>20 words?</p> <p>21 MR. ST. PHILLIP: Objection. You can</p> <p>22 answer.</p>	<p style="text-align: right;">224</p> <p>1</p> <p style="text-align: center;">2 CERTIFICATE</p> <p>2 STATE OF KENTUCKY :</p> <p style="text-align: center;">3 SS:</p> <p>3 COUNTY OF JEFFERSON :</p> <p>4 I, Kathy Nold, a notary public in and for</p> <p>5 the State of Kentucky, do hereby certify that prior</p> <p>6 to the giving of his deposition, the within named</p> <p>6 EDWARD LEMKE was by me first duly sworn to tell the</p> <p>7 truth, the whole truth, and nothing but the truth;</p> <p>8 that the foregoing pages constitute a true and</p> <p>9 correct transcript of testimony given at said time</p> <p>9 and place by said deponent; that said deposition was</p> <p>10 taken by me in stenotype and transcribed under my</p> <p>11 supervision; that I am neither a relative of nor</p> <p>12 attorney for any of the parties to this litigation,</p> <p>12 nor relative of nor employee of any of their</p> <p>13 counsel, and have no interest whatsoever in the</p> <p>14 result of this litigation.</p> <p>15 IN WITNESS WHEREOF, I hereunto set my hand</p> <p>16 at Louisville, Kentucky this 12TH day of January,</p> <p>17 2005.</p> <p>18 MY COMMISSION EXPIRES JULY 20, 2006.</p> <p>19 KATHY NOLD</p> <p>20 REGISTERED PROFESSIONAL REPORTER</p> <p>21 NOTARY PUBLIC, STATE OF KENTUCKY</p> <p>22</p>
<p style="text-align: right;">223</p> <p>1 A. Yes.</p> <p>2 Q. All right.</p> <p>3 MR. MANGI: Nothing further. Anything</p> <p>4 else, Ed?</p> <p>5 MR. NOTARGIACOMO: Nothing at this time.</p> <p>6 MR. ST. PHILLIP: No questions.</p> <p>7</p> <p>8 (WITNESS EXCUSED.)</p> <p>9 (DEPOSITION CONCLUDED AT 3:25 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

1

A	222:16	110:22	acronym 22:1	adequacy
aamangi@p...	above 22:17	acquire 12:20	38:11 195:22	116:16
2:11	27:1 124:3	15:19 16:8	across 40:9	adequate
ability 121:21	130:9 135:15	16:13,19	49:21 172:20	49:19 67:8
139:15	157:11	39:1 62:19	190:17 204:1	191:15
able 25:14 26:5	absolute	64:3,18 66:9	221:6	198:16
51:21 141:9	212:18,19	105:3 106:17	action 1:2	adjusted
about 7:17	absolutely	107:4 122:9	115:10	221:18
9:12 10:2	208:3 217:6	122:14 123:1	ACTIONS 1:6	admin 69:18
24:18 27:22	217:9	123:18	actual 84:12	210:17
29:15 38:12	accept 48:20	124:10	86:20,21	administer
41:12,12	67:22 84:9	143:11	105:3 139:8	12:13,21
42:3 43:18	109:12,22	191:19	162:18	199:7 205:15
47:3 54:18	110:6 124:3	211:12,14,17	201:16	administered
54:20 56:7	215:22	214:6 215:19	211:13	20:8 21:2,14
57:20 64:17	acceptable	217:2	222:19	23:11 24:1
65:20,20	91:6 207:17	acquired	actually 23:15	28:2,4 39:21
73:5,8,19	210:12,18	166:12 211:1	72:10 90:21	43:10 56:3
77:8 79:22	accepted 84:2	213:5	106:4,16	60:18 64:6
81:5 82:2,3	84:5 110:1	acquiring 13:8	114:6,19	65:9 83:8
88:5 89:9,21	215:21	18:12 65:16	177:14	96:19 97:8
96:14 108:17	accepts 213:19	105:18 215:1	181:15	120:18
115:3,5,7	access 20:11	215:5,11	189:10	166:12 176:1
125:2 126:2	20:14,16	216:2	212:19	190:3
126:22	143:10	acquisition	ad 126:5,5	administering
127:14	145:22 165:1	13:13,21	add 71:14	62:10 191:9
129:14	accessed 30:10	38:12 39:4	144:15 153:6	197:22
131:10 133:4	accommodate	62:15 63:2,6	202:3	administers
143:19,22	6:20	64:14 65:3,9	added 176:8	57:21 81:7
146:11	ACCORDA...	65:20 67:12	addition 44:14	administrati...
149:15	1:21	68:1 99:10	54:21 92:3	7:3,7 38:2
155:10 161:9	accordingly	99:20 100:2	102:6 107:11	56:12 58:1
163:2 165:8	139:19	100:8,14	115:6 147:8	88:20 113:19
170:17	account 198:9	101:14 124:7	193:21	121:6,8
173:11 180:1	221:6,18	139:8 143:22	additional	136:18 189:3
184:15	Accounting	153:21 154:2	156:19	202:11,17
190:13 191:8	7:3	154:3,7,9,16	address 51:13	203:11
192:9,15	accumulated	155:7,11,21	90:10 119:5	administrative
197:13	177:1	156:7,18,21	171:13	69:10
201:21 202:8	accurately	157:12	addressed	administrator
202:10	55:14 104:15	161:13	217:16	103:8
208:10 210:3	104:17,22	162:19	addresses	adopted
219:20	achieve 98:9	201:16	129:15	140:14,16
221:13 222:1	achieving	221:13,20	Adeel 2:8 5:17	205:1

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

2

advance 132:22	112:11	50:4 51:7	allowances 168:20	alternative 44:21 46:7,8
advantage 68:7 139:17	ago 13:17 38:13 190:14	ain't 190:7 191:6,13	allowed 176:19	47:2 48:21
advice 157:4	agree 48:13 55:18 56:14	all 1:6 6:21 9:3 15:11 17:15	176:22 177:1	49:4 50:18
affect 85:14	56:19 68:6	17:20,22	177:12,18,20	51:15,16
86:1 108:1	70:3,21	20:16 27:2	180:6 181:10	73:10 100:22
108:18	72:18,20	37:7 46:14	181:16,20	127:13
116:10	76:8 101:1	51:5 61:20	allowing 98:10	160:17 183:9
192:21	106:19 113:9	64:11 66:15	148:13	although 36:19
193:13	113:10 120:1	70:18 71:4	allows 144:19	89:8 207:19
207:21	123:4 144:10	72:14 74:12	all-inclusive 87:3 88:22	always 45:16
affected 107:20	144:19	76:4 87:20	almost 38:4	48:22 68:16
116:19	145:21	92:17 98:15	77:12	95:6 140:3
after 5:2,10 7:1	149:10 155:4	99:13,21	alone 69:10	194:4 212:10
9:13 10:6	156:17 162:6	101:15,22	147:13 192:2	212:12
53:6 79:22	164:6 167:3	103:15 104:6	along 36:14,16	am 54:20 55:3
85:15 90:6	167:16 168:3	104:7 108:20	37:6 95:4	219:1 224:11
169:16	168:4 169:8	110:16	158:22	Amended 3:14
afternoon 197:8	185:16	112:21 119:5	176:15	amendment 131:22 132:3
again 16:15	193:17 199:4	122:12	185:21	America 22:7
27:16 36:13	agreed 63:14	123:21	already 114:13	AMERICAS 2:9
54:1 72:14	76:5,19 90:9	125:12,14	162:21	amount 23:7,9
78:15 79:18	127:12	129:4 132:17	also 7:20,22	23:10,12
81:20 99:18	138:10 152:9	138:18 139:9	26:13 33:1	28:10 45:21
108:12	agreed-upon 121:2 156:14	145:21	40:7 44:18	48:1 49:9
116:13	agreement 3:14 53:14	148:12	47:2 57:10	53:4 54:8,22
119:12 130:9	91:10 110:19	160:20	58:2 59:3	55:6 60:5
148:3 150:12	131:22 147:7	179:16 189:1	73:14 100:8	64:4,19,20
158:7 159:2	149:19 151:2	189:11	114:7 115:22	65:17 66:8
159:3 161:19	159:16	195:20	116:4 119:18	67:12,22
171:13	agreements 142:8 172:20	196:15 219:7	153:4,5	77:14 81:5,9
180:11 184:4	ahead 14:7	219:10 221:6	171:7 172:4	85:15 86:13
213:13	30:19 53:2	223:2	183:4 186:20	86:14 87:12
against 51:18	70:15 71:13	allow 31:17	190:2 197:21	93:20 94:6
53:6 79:11	155:15	34:15 36:12	198:20	99:21 102:17
79:19 117:18	178:12	54:3 119:1	200:11	110:7 122:14
207:13	aim 66:6,7	121:22	206:14	122:15 123:1
agencies 87:16	67:7 198:15	146:13 166:6	208:17 210:3	123:19 136:2
161:10	aiming 65:8	189:8 220:8	211:15	138:11 142:7
agency 8:5	aims 49:21	220:9	212:16 220:4	155:8 156:19
aggressive		allowable 156:14 177:8	222:15	176:20,22
		181:11	alternate 50:13	177:1,2,4,7
			61:10	

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

3

177:12,17,18	95:13 99:3	166:6 172:1	39:8,10	126:2 137:8
177:20	102:14	172:22 179:6	42:10 43:3	181:7 187:13
178:10 180:5	116:12	179:7,8	54:15 59:19	188:14
181:10,12,15	124:14,14	189:8,14,20	62:10 69:16	201:19
181:16,20	126:13 140:5	198:17	71:5 73:2	202:21,22
197:16 198:5	147:18	199:22	76:19 78:17	220:10 223:3
199:6 205:14	158:12 166:2	200:15 205:2	83:9 84:4	anytime
215:2,11,19	175:8 203:10	208:13	86:5 87:17	111:17
216:2	210:14	216:19	88:6 89:18	anywhere 59:5
amounts 23:22	answer 4:2	217:17	93:13 97:19	apart 203:14
59:15 64:2	6:10 10:22	219:21 220:8	97:19 101:17	apologize
69:9 70:10	11:12 12:18	220:10 221:2	103:3 105:19	168:7
78:10,12	14:5 17:2	222:7,22	108:7 114:21	appear 91:5
79:2 82:16	21:3 29:18	answered	121:21	150:18 166:2
83:7 84:12	34:9,14,17	16:22 32:14	129:18 141:8	appears 132:2
94:9 96:18	36:12 45:2	39:14 42:15	143:13	150:21
97:7,20	50:10 52:2,4	59:9 69:21	147:12 148:4	159:18
114:21 123:3	54:2 60:9	70:22 71:12	151:17 159:8	160:19
123:18 126:9	63:11 65:13	71:22 103:19	159:9 163:2	Appendix
143:11 147:8	65:22 68:3	106:1 107:7	164:3,21	165:7
163:17	70:15 71:3	144:22	165:1 166:19	applicable
178:18 180:6	72:11,12,21	149:13	167:17 169:5	108:21
180:13	73:1 74:4	204:18	170:10,22,22	applied 177:20
183:21	75:7 80:22	answering	182:21	apply 89:18
193:20	81:3 82:9,11	204:20	188:17	208:16
197:18	92:11 93:6	answers 6:12	204:13,15	approach
202:10 214:6	97:14 103:20	54:4 66:1	205:1,4	38:18 72:22
215:5 218:19	105:20 112:4	Anthony's	207:4 209:17	77:21 80:21
analysis 11:5	114:10 115:1	74:22	211:5 212:18	82:19 90:2,3
17:16 39:8	119:2,6	antibiotics	213:4 216:19	219:13
68:10 78:16	121:21 122:1	153:11	217:1,1,3	approaches
82:9 90:13	122:4 127:3	any 6:14,18	221:4,9,16	219:14
90:15 91:2,8	128:20	10:17 11:7	224:11,12	appropriate
110:3 111:12	142:10 144:3	11:17 13:9	anybody 173:4	80:2 199:10
122:5 126:5	145:13,18	14:16,19	anyone 124:18	approximate
analyze 62:5	146:13 148:8	16:6,9 17:5	165:4 169:3	27:11 199:15
116:12	149:4,8	17:10 18:10	172:14	200:3 211:4
125:13	151:18	18:11,11	194:21	212:22
ancillary 151:4	154:17,20	29:12 31:8	anything 19:14	approximately
154:10	155:13 157:9	34:2,5,6,10	19:18 40:14	8:21 42:21
another 25:4	157:16	35:22 36:1,7	59:18 71:13	approximati...
50:4 52:10	158:20	36:7,17 37:9	71:15 88:14	94:15 179:12
56:2 58:15	159:15	37:11,13,13	106:11	area 25:21
68:8 80:1	161:20 162:1	37:19 39:3,6	114:15 115:5	40:19 68:8

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

4

70:5 79:14	ask 6:14 131:1	104:19 124:1	authenticate	101:12
107:21	141:16,17	assumption	133:3,7	113:17 118:9
108:20 119:9	148:7 152:20	105:6 117:20	authentication	118:13
125:11	160:3	assured 219:2	132:17,21	120:11
210:12,14	asked 16:21	Atlanta 35:13	148:4 158:17	147:11 152:2
areas 23:6	20:22 32:14	attached 29:16	159:10	152:5 162:4
34:20 35:15	39:13 42:14	153:7	authenticity	164:16
35:19 70:6	59:8 69:20	Attachment	148:9	166:10,15
78:7 80:6,7,9	105:16,22	132:4,10	authority	169:13 171:8
91:4,4 95:7	107:6 125:2	133:12	40:17	171:15,18
95:19 111:5	144:21	152:17,20	available 21:10	213:4 215:4
116:19,22	154:14	153:5 160:1	98:5 154:10	215:10,13
121:11	197:12	160:4	167:22 168:3	217:1 218:15
162:21	198:14 202:8	attempt 63:20	168:21	218:22 219:7
argue 102:15	204:6 222:15	63:22 66:12	AVENUE 2:9	220:21 221:4
133:6	asking 54:2	194:19	2:14	221:9,16
argument	59:10 149:15	attempted 62:5	average 1:4	away 19:22
103:10 104:1	201:20 202:9	62:8 63:6,17	18:13 30:10	97:4
104:2	204:11,14	173:10,16	104:21 105:1	AWP 12:1
argumentative	asks 132:16	attempting	105:7,14	13:3,5,9 15:4
69:13 215:9	aspect 140:5	113:15 139:7	106:15	17:11,18
217:10	170:21	attention 95:7	163:18 183:8	18:2,13
Arizona 192:8	aspects 83:4	131:14 132:7	198:4 200:1	23:15 29:12
192:9,10,11	175:2 179:4	134:18	201:16	30:9,10,17
192:13	assess 51:21	150:13	209:10	33:14 39:7
around 27:8	62:8 110:21	152:13	211:22 212:4	39:12 40:11
190:20,22	assistant 8:1,8	159:14,19	212:11,11,13	43:19 44:12
arrangement	associate 90:20	165:7 168:16	212:14,15,19	44:16,21
142:14 160:1	195:10	168:18	212:21 213:3	45:10,19
arrangements	associated	attest 149:5	213:6,7,14	46:5 47:6
120:2,12	195:11	220:20	216:9 222:18	48:9,17,21
142:2	Associates	attorney 63:10	AW 99:13	49:1,1,8
arrival 17:11	111:9	151:9 157:3	aware 11:22	50:12,16,19
18:10	Association	157:6 224:11	14:22 18:11	51:16,16
arrive 49:11	22:6	audit 7:16	21:17 31:9	52:8,11
50:21 53:4	assume 50:11	143:1,5,14	32:3 33:16	54:12 61:10
193:21 194:8	65:2 89:6	144:11	38:15 59:19	61:16 73:10
194:15	105:5 107:9	audited 143:19	63:4,19,20,22	75:4,15
arrived 13:20	115:20 145:2	auditor 7:16	68:22 69:7	76:15 77:16
18:15 107:18	150:4 170:6	audits 143:21	78:3 86:7,9	97:1 99:5
ascertain	202:15	144:7,20	87:15,19	101:13,18
205:20	215:20 216:1	authentic	99:22 100:5	104:14,17
aside 106:14	216:3 219:13	148:21	100:7,11,13	105:2,13
127:12 213:3	assuming	149:10,19	100:17	107:4 127:9

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

5

127:13	Bachelor's 7:2	23:1,6 27:13	211:21 212:6	16:3 17:4
128:21 129:4	back 10:5 21:2	28:15,17	212:10 213:2	18:2 19:11
129:8 135:10	29:21 36:17	31:14 40:16	bases 74:16	21:20 22:20
135:16,20	48:18 71:10	44:21 45:6	179:10 182:6	24:9,19
136:3 153:11	71:21 72:5	45:10 46:22	182:13,17	25:14,22
160:12,17	79:3 91:3,15	48:6,11,21	187:8 209:7	26:5 27:1,14
163:18,22	100:20 106:2	50:13,14	basic 86:4	27:17 28:12
165:12,20,21	106:7 110:16	52:11 61:10	113:14 126:2	28:21 29:2,4
183:10	133:10 134:9	61:13,21	basically 104:2	29:7,11
187:10,13,17	136:22	73:8,11	basing 216:8	30:10,12,12
188:3,9,15	137:15 141:8	74:20 75:1	basis 22:19	30:15,17
190:6 191:6	148:6,19	76:7,8 78:3	50:13 54:13	31:13,14
191:13,15,18	151:1 164:12	81:10,21	54:15 56:17	35:2,4,9
198:3 199:13	165:9 167:11	82:20 83:17	60:20 61:4	36:15 39:11
200:2,8,20	175:18	85:13 88:15	74:13 75:14	40:19 41:15
201:7,16	206:12 220:5	89:1 96:21	76:2 80:12	43:8 45:6,13
204:4,13,21	222:8	111:12	81:1,17 83:6	46:17 47:21
205:9,19	background	118:16 120:8	84:11 85:6,8	49:1 50:16
206:2,7	7:1	125:10	91:18 96:22	50:17,19
207:5,13,14	bad 90:17	127:14 129:3	97:15 98:2	51:21,22
207:20 209:7	badger 71:12	129:4 132:12	98:17 99:4	52:8,10,11,14
209:11,18,20	71:19	132:15	103:17 105:2	52:15,16,19
209:22	balance 26:17	133:13 134:5	105:6,12	52:21 53:19
210:22	band 95:4	137:8 139:4	129:8 134:1	54:15 55:22
211:17	bank 30:9 33:6	143:17 145:1	134:8 136:19	56:1,17
213:19 214:1	33:8,12,14,17	147:9,11	137:12,21	57:18 58:11
214:3,7,13,20	100:8 216:5	148:5,12,14	138:15	58:13,13
215:6,12,21	bargaining	148:15 149:2	151:11 175:9	59:3,5,15,21
216:1,20	25:4,11	157:1 158:15	176:3,5,9,11	60:3,4,6,20
217:2 218:9	27:17 78:9	160:17,18	176:13	61:13,15
218:12	96:8 108:2	162:15	178:14	62:2 64:11
221:19	116:6,10	164:19	179:13 183:6	66:7,22
AWPs 16:8,13	208:10,15	171:10,15	184:19 185:3	67:14 68:17
16:20 17:7	base 51:12	173:15	186:1,15	68:18 70:6
33:17 44:9	53:8 76:11	180:20 181:8	193:1 201:5	70:11 71:16
44:10 47:22	95:11 97:21	181:21	205:10,11	74:18,19,20
100:3 166:13	97:22 98:6	182:15,21	206:2 209:21	74:21,22
183:20	98:10,11	183:10,13,13	219:15	75:22 77:10
222:16,17	185:5,11	183:16 184:9	basket 219:8	77:12,15
	212:9	184:10,11	Bates 131:1,7,9	79:2,9,15,17
B	based 10:20	185:2,7,9	147:20	79:17 81:9
B 3:9 152:17	14:4 15:4	188:8 194:2	Bay 10:8,9,10	81:10,15,18
152:20 153:5	17:18 21:9	197:18 205:8	be 5:6 12:13	82:13 84:2
205:15,18	21:18,20,20	208:21	13:18 14:18	84:12 85:22

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

6

87:2,6,11	187:7 191:18	219:22	98:19	5:18
88:1,16	192:7,22	become 12:6	behalf 173:2,6	below 22:16
90:12 91:5	201:8,9,16	31:8 38:15	behind 44:17	27:2 50:16
92:1,3,8	203:6 206:4	219:7	being 5:2	67:12 68:1
94:11,15	207:4 208:22	becomes 47:10	14:18 23:1,4	135:2 136:12
95:13,21	209:2,15	been 5:20,22	29:11 46:15	138:9,14
97:18 99:19	212:12	6:7 13:6 22:7	49:17,22	163:17
101:1,15	214:13,14	23:12 27:22	70:10 75:8	165:12,20,21
102:5 104:4	215:1 217:17	28:8 32:18	97:1 99:21	166:13 215:6
105:18	218:2 219:2	36:8 38:4	107:12	BEMPORAD
107:14,20	bear 112:17	39:19 40:3	115:13 122:6	2:13
109:7 110:2	bearing 102:11	41:17 42:13	126:10 135:9	benchmark
110:4,17	bears 131:1	55:12 68:11	136:2 166:12	18:3,7 49:5,7
111:1 112:5	became 9:2	69:1 73:3	207:6 210:11	49:9,17,22
112:6,9,22	11:22 13:15	80:10 83:4	210:13,16	50:4,5,18
113:2 115:20	14:22 32:3	84:17 88:5	212:16,22	51:21 52:17
116:20 117:2	218:22	89:12 90:6	213:1 215:18	52:20 53:18
121:4 124:6	because 5:6	101:9 114:20	believe 9:12	53:20 92:6
124:13,16	16:3 17:15	115:14	16:2 22:7	99:3 100:22
125:17	29:5 44:15	126:14	32:8 35:2,10	101:19
128:17 129:2	46:1,13 47:6	132:13	36:8 38:10	105:19
129:21 130:5	47:14 51:5	133:14 135:6	42:16 57:13	106:10
132:2 134:9	51:16 64:20	137:19	59:21 62:21	194:14,17,17
134:13 135:1	75:8 79:18	139:16	91:20 93:5	199:14 200:3
139:20 140:2	81:2 82:1	141:12 144:5	94:14 97:14	218:10
141:9 142:14	85:22 95:3	148:11 151:8	104:12	benchmarks
144:6 147:7	96:8 98:14	161:14 173:1	106:10 111:6	11:17 14:1
150:5,18,21	98:16 101:19	173:8,12,12	112:7 114:6	14:19 49:11
154:8 157:5	103:22,22	175:10 178:3	129:7 130:5	52:14,15
159:18	112:6 117:22	178:5 180:15	142:11,18	203:22 204:4
160:12	130:19	187:1 193:7	147:16	benefit 32:13
163:17	137:16	198:4 213:8	149:14	138:22 139:3
164:15	139:14	before 5:4,20	151:17	benefits 31:10
167:14	141:13 149:6	54:2 80:22	154:17,20	32:5 36:2
169:15 172:8	151:20	90:8 93:11	157:10	177:20
172:17	171:18	119:20	170:17 172:3	BERMAN 2:3
173:21,22	172:19	124:18 133:6	189:4 191:7	best 6:15 21:11
175:11	178:22 179:7	164:20	192:19,22	49:18 84:9
176:12 179:9	183:22	169:21	193:11,15	99:11 112:16
179:12	189:20 201:4	175:19	198:18 206:3	142:12,22
180:11,18	201:21 207:8	177:20	211:15	156:1,8,9
182:21 183:1	212:13 213:8	begin 46:4	212:21	198:15
183:15,16	213:17 218:2	85:18	believed 40:19	221:17
185:15 187:6	218:20	beginning 24:9	Belknap 2:9	222:12,13

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

7

Bethesda 8:2,4	181:17 189:1	124:18,21	72:14 73:14	51:1 53:1
better 25:15	billing 137:13	169:15,17,21	78:3 84:11	54:1 63:9
26:5 47:16	bit 36:15 66:5	175:19	85:3,7 88:21	64:22 70:14
98:17 117:4	130:9 196:20	196:21	98:20 99:19	114:7 122:17
117:7,17,18	blank 151:3	breaker 216:5	103:19 104:4	144:14,22
118:2 125:12	block 150:16	breaking 83:1	106:4 110:7	145:9 167:6
176:3	board 49:21	brief 201:22	113:15	174:7 219:19
between 6:6	204:2	briefly 195:15	115:14,22	CAMBRID...
16:7,12 17:5	Book 30:9	broad 7:12	118:1 119:6	2:4
27:4 34:10	32:18,20	21:7 27:16	126:17 130:5	came 10:4,6
39:7 48:18	33:8,13,18	building 19:10	130:6 131:15	14:11 15:9
50:15 57:18	99:22	125:4	139:13 140:3	60:21
71:20 91:13	bookkeeping	built 19:12	140:4 142:10	can 6:12,22
92:14 94:19	143:20	20:12 40:12	146:10 152:3	10:22 11:12
114:21	books 145:7	43:19 45:10	155:4,12,22	17:2 21:11
121:14,14	146:3	46:6 74:18	156:6 159:3	28:6 29:17
122:14	bore 13:9	74:19,22	160:7,10	30:5 33:10
131:22	both 50:19	Bureau 7:16	164:6 167:15	34:14,17
138:15 141:1	51:6 58:8	business 7:2,7	170:6 171:17	36:17 47:17
141:7 149:19	61:6 68:15	37:16,17	172:18 173:5	47:18 49:10
151:3 158:12	70:3 89:16	70:17 72:21	178:5 181:19	49:18 50:10
159:16 164:4	93:16 126:10	73:2 111:18	186:14	50:13 52:4
166:19	126:20	116:13	189:14	57:4 58:11
167:18 169:6	bottom 70:18	117:10,19	208:17 212:6	59:14 63:11
178:6 182:16	84:19 131:21	123:22 124:1	212:16,20	65:2 67:2
185:7 207:9	165:16	124:2 139:22	219:6,17	68:20 70:3,6
beyond 10:21	168:19 210:7	148:22 150:2	222:7 224:7	70:15,16
14:5 29:16	bought 186:10	170:3 179:2	buy 200:9,21	71:3 72:1,6,9
34:14 113:9	bounds 173:9	179:4 186:11		72:10 79:6
113:16	Bowler 121:17	189:16	C	80:2,22
114:17	161:15 222:4	195:12,16,19	C 2:1 224:1,1	82:11 88:9
118:19 143:7	box 213:20	196:13 210:4	calculated	89:6 90:10
161:10 172:4	boy 178:3	212:17 213:2	74:14 181:21	94:11,21
bid 90:6	191:7	213:13,18	calculation	96:15 97:4
bids 89:14,15	Brad 195:5	216:5,9	43:6	98:9 101:1
big 25:8	BRADLEY	but 15:11	calendar 24:10	102:1,5
bigger 108:15	2:18	23:10 28:13	call 40:11 44:1	105:5 106:2
bill 88:19 89:4	brand 129:18	30:16 31:21	73:15 115:3	112:16 120:1
189:18	165:18	37:3 49:9	128:4 183:17	122:4 126:4
billed 29:5	branded 29:7	54:10,15	called 5:1	126:7 129:11
30:8 58:5	130:3,7	55:6,14	202:9	137:3 138:18
64:13 81:10	break 6:19	56:14 57:17	calls 14:4	139:10 140:2
179:21	38:6,8 66:6	63:10,17	31:12 34:9	141:16
180:15	80:2 83:2	65:7,21 68:9	36:6 50:8	142:19 144:3

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

8

144:10,19	147:8,12	93:15 104:4	178:17	chosen 167:17
145:2,21	capitation	104:5 126:19	183:19,21	Circulations
146:11	142:8 147:3	127:19	218:19 221:5	7:16
149:10 150:4	191:4	128:17	changed 19:5,7	circumstances
151:10	care 8:5 9:3	135:17	19:21,22	26:4 33:7
152:13 155:4	10:8,10	138:21	42:6 220:18	cited 102:22
155:13	19:16 20:1	152:11,11	220:21	CIVIL 1:2,21
156:17 157:9	103:9 139:14	189:17 209:1	changes 185:9	claim 15:8
162:7 163:3	190:19	213:4 214:21	changing	30:13 61:16
163:6,16	career 63:12	categories	38:18 105:21	88:17,19,20
164:6 167:3	68:4 103:8	31:21 153:16	201:18	89:2,8
167:8,16	Carolina 23:8	161:20	characterize	125:10
168:3,5,12,16	202:19 203:7	category 173:5	146:10	126:15 128:1
169:8 178:8	205:15	189:11	charge 40:9	177:21
183:15,16	carrier 196:6,7	causing 67:13	42:19 43:10	claims 30:11
192:21	196:8,10	caution 174:5	61:4 64:13	45:16 125:7
193:17,18,18	carriers 23:18	Center 7:18	73:10 75:1	125:8,8
193:19,21	24:4,12	certain 32:22	81:10 83:18	126:13,17
194:2 196:19	carveout 44:1	91:4 95:8	86:20,21	127:1,20
198:15	45:18 60:1	126:15 155:8	136:21	137:15,16
199:21	case 5:20 44:5	161:10	137:14,17,20	177:5,19
200:15,16	47:8 49:7,10	166:11 177:9	186:17	184:10
201:2 210:12	49:16 52:21	177:19	187:10 205:5	189:16 190:1
210:17 214:2	77:3,5,6 84:2	185:16	209:16	207:10
220:2 222:7	88:18 89:6	203:22 204:6	charges 21:21	clarification
222:11,21	89:18 95:8	204:7	61:6 136:15	48:15 127:8
cannot 33:13	99:2 115:4	certainly 26:12	160:10	201:14
51:13 55:14	115:20 122:6	53:13 60:2	179:21 184:6	clarify 57:4
69:22 75:7	124:14	65:4,7 70:3	184:12	81:4 88:14
82:9 120:4	129:22 130:5	75:12 78:15	186:18 205:8	137:8,12
143:3,13	137:13 140:2	83:15 87:20	check 205:19	139:10
149:8 164:21	156:3 208:21	100:2 107:22	chemotherapy	172:11 181:7
179:6 189:20	209:4 213:4	110:1 111:17	56:13 153:21	181:9
216:16 221:2	217:1 219:6	113:7 120:1	155:10	Clarifying
can't 67:17	cases 45:5	122:22 124:5	163:16	185:6
79:19 120:16	46:21 47:1,3	160:19 164:6	Chicago 35:13	clarity 140:21
128:20	47:21 48:8	169:8 179:16	202:17 203:5	class 197:6
142:10 149:5	49:8,9 56:1	210:10 215:4	choice 19:16	clause 142:20
220:20	61:2 66:20	certainty 27:10	20:1 84:10	144:11 145:5
capitated 12:8	79:2 80:11	67:18 120:16	choose 36:18	145:5,22
87:4,6,8	80:19 81:13	certify 224:5	155:19	146:7 159:22
142:2,4,6,13	81:15,17	cetera 138:6	chose 156:10	clauses 146:8
142:16	82:15,18	chance 79:14	167:4 169:9	clear 57:20
146:21 147:6	83:12 87:21	change 64:19	194:15	167:14 204:1

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

9

clearly 209:11	come 40:21	compel 202:18	composed 9:4	36:9 118:22
client 34:19	66:19 68:10	compels	comprehensi...	133:2 143:18
clients 141:2	91:9 109:15	202:16	117:6 179:10	145:10 157:3
203:12	109:16	compensate	comprise 43:5	158:16
client's 36:7	172:20 175:1	199:8	concerned	161:17 189:6
162:17	177:21	competency	113:11	consented
188:22	186:12	130:10	concerning	173:6
clinic 103:8	190:16	competing	34:13 36:10	Conservation.
108:19	comes 5:1	35:20	121:19 133:3	7:21
close 18:12	48:18 70:18	competitive	145:11	consider 54:13
39:1 178:8	91:18 94:18	5:7 35:5,15	158:17	207:16
212:3 213:7	96:1,10	50:20 97:10	161:13,18	consideration
closer 82:13	126:12	110:22 111:5	162:18	64:4
CMS 24:9,13	comfortable	114:8 140:5	173:13 189:7	considered
38:17 128:14	101:11	151:16,22	concession	35:2 41:15
128:21	coming 32:18	202:9,14,15	139:17	115:13
code 29:2,5,11	36:15 53:14	203:13	CONCLUD...	166:18
30:8 45:20	89:20 97:16	208:10	223:9	consistent
53:5 60:1	command 26:5	competitively	conclusion	158:18
125:11	commenting	152:7 206:7	63:9 144:14	consituted
127:10	144:6	220:1	144:22	221:19
128:15	commercial	competitor	145:10	constitute
129:17,22	138:6,6	111:18,19	conduct	224:8
codes 28:8	141:10,12	competitors	144:11,20	constitutes
44:6,19	COMMISSI...	111:14	conducted	180:20
56:14	224:18	116:17	193:5	consultant
coding 28:17	common	117:19 130:3	conducting	111:10
Cohen 2:13 3:6	102:19 129:7	complaint	112:20	contact 89:21
195:6 202:1	179:10 204:1	102:19,21	confer 88:9	90:12,21
202:3,7	204:4 213:18	complete 73:7	137:3 181:2	contacts 90:5
208:4 211:2	commonly	component	conferred	contain 59:22
211:6	181:11	57:11 58:1,2	88:13 137:7	95:9 200:8
colloquy 72:5	communicati...	58:3 61:12	181:6	200:20
column 135:20	91:12 161:13	70:12 86:14	CONFERS	contained
153:11	162:18	86:15 88:1,2	88:11 137:5	175:6
165:19 175:6	community	89:5,8,9,10	181:5	contains
175:7 176:16	96:6 168:22	92:15,16	confidence	219:22
176:19 177:3	compare	94:8 96:11	218:13	content 121:19
177:13	125:16 126:9	96:14 97:6	confidential	context 6:4
178:13 182:2	comparison	97:19 109:3	1:9 5:8	12:6 38:15
182:7,9	18:8 19:12	113:18,19	conote 213:4	190:16 191:5
183:8,12	111:1	198:5 209:8	consecutive	193:7
combination	comparisons	components	178:5	continue
29:8 140:12	111:5	198:12	consent 34:13	158:21 159:7

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

10

162:14 163:1	179:15	87:12,14,17	18:16 25:16	170:20
172:5 175:10	180:20	101:2 112:12	25:18 26:2,3	171:14,20
206:2	183:21	116:3,5	26:7,9,13	174:21
continues	185:19 188:2	118:10,14	27:18,20	179:18
129:8	191:1,3,9	133:19 134:1	28:7,14,22	181:18 184:1
continuing	193:8 203:17	141:6 142:4	29:8,13 30:3	184:22 185:4
37:3	210:5,13,18	142:7 143:2	30:4 31:2	185:18
continuously	216:14 217:4	146:8 147:12	37:18 38:13	186:19
19:1	217:19	149:22 156:7	38:14 41:8	187:10,11,15
contract 3:16	218:19	169:22 171:9	42:4 43:11	188:9,11
3:18 6:5 8:1	contracted	171:9,16	43:12 47:12	192:3 193:22
19:11 22:20	140:7 177:8	172:10,11,13	48:1,4,11	194:10
22:20,22,22	186:17 187:9	173:19 183:1	49:2,3,5,12	197:20 198:1
24:19,22	205:5 209:16	183:4 203:19	49:14 50:16	198:2 199:11
27:3 45:16	contracting	217:14	50:22 54:20	200:5 201:11
46:15 50:1	20:2 40:13	221:11	55:3,7,10	208:18 209:3
55:8,9 56:10	44:1 45:17	contractual	58:16 59:7	209:12,18,19
56:11 58:6	56:6 98:6,9	62:22 205:13	61:8 63:3,19	210:5 211:12
58:18 59:11	219:20	contractually	64:14,15	212:1 213:15
59:12,16	contractor	49:11	76:3,17	214:8,17,20
61:1 62:3	90:15,18	control 25:6	83:14,19	215:3 216:11
63:15 70:4	91:8,14	60:22 149:7	84:21 86:3	217:2,5
76:20 77:6,6	152:3 218:22	171:19	88:3 89:11	218:4,8,21
81:11,22	contractors	186:13	96:12 97:8	219:17
82:1 83:10	19:15 48:16	conversation	101:2 102:3	221:14,21
86:17 88:7	48:19 99:4	88:15 137:8	106:5 108:22	224:8
89:9 90:9,11	126:3	181:8 190:20	109:1 113:2	correctly 80:13
92:15,16	contractor's	190:22	115:19	141:22
93:9,10	91:9	conversations	117:11	211:10
95:14 109:5	contracts 12:8	174:11	122:10,11,16	correspond
109:20	12:11 15:3	194:21	123:11 124:7	28:14 127:6
115:18,21	17:17,17	copies 170:7	124:8,12,14	128:7,13,18
125:5 133:17	37:10 40:8,9	copy 148:21	125:19 127:7	corresponde...
136:4 140:14	40:11,17,21	149:11,19	127:21 128:9	38:17
140:16 143:5	41:6 42:22	168:8 175:1	129:12 130:3	Corum 195:6,7
144:7 145:12	43:4 47:11	corporate	132:1 135:10	195:9,13
147:14	55:12 57:15	34:10	135:21,22	cost 13:13
150:19	59:22 60:3	Corporation	140:10	38:12 47:19
154:16 155:5	63:1,4 67:15	7:22	144:20 145:8	54:14 65:10
155:16,18	77:11,13	correct 10:3,7	147:13	66:13 68:7
156:11,15	78:21 82:1,3	12:15,22	150:19 156:1	77:14 78:22
157:2,4,15,16	82:12 83:7	13:1,3 14:14	156:8,20	79:11,17,17
158:12	86:16,19,21	15:6,13,14	168:14,15	94:22 95:1
160:18	87:1,2,8,10	17:8,21 18:4	169:10 170:3	97:15,22

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

11

98:11 99:20	219:16	88:11,14	220:14,15,16	99:14 112:16
104:15,18	221:13,20	114:22 133:5	currently	118:18
105:1 121:7	could 7:12	137:5,7,9	20:16,18	119:19
139:4 141:11	13:6 14:18	148:7,7	33:13 35:22	198:15
155:21	26:20 27:10	154:5 173:16	41:7,9 42:3	dealing 26:18
156:18,21	27:14 28:21	174:11 181:5	46:9 47:6	78:8,10
157:6 163:19	29:2,4,7 49:1	181:7 194:22	113:13	109:2
164:1 197:22	52:8,10,15,16	224:13	179:14 185:9	dealings 24:11
201:5 203:1	62:2 67:4	counsel's	customary	36:2 37:10
203:2,14	68:3 70:11	114:11	136:15,21	deals 121:13
207:11	74:18,19,20	country 23:6	137:14,17,17	dealt 44:19
214:11	74:21,22	78:3 107:21	137:20	decade 118:18
215:16 219:4	77:10,13	184:6 192:14	160:10	December
costing 214:2	78:16 87:6	COUNTY	184:11	168:13
costs 13:21	88:16 92:20	224:3	cut 220:13	decide 81:1
18:8 62:6,9	99:19 105:18	couple 202:2	D	decided 88:6
62:15 63:2,7	109:15,16	course 86:1	D 2:12,18 3:1	deciding 80:16
64:9,14 65:4	112:4 116:8	133:20,21	Dallas 35:13	98:22
65:5,21	116:9,10	148:22 150:1	damage 151:21	decision 30:7
67:13 68:1	119:11	155:22 170:3	DANNENB...	70:17 90:4
69:19 77:12	124:13,16	COURT 1:1	2:13	110:13
79:13,20,20	129:21 130:2	cover 66:2	data 30:9 33:6	112:19
80:7,10 95:9	130:7 134:18	69:18 102:17	33:8,12,14,16	decline 107:14
95:12 97:1	143:10	103:11 130:2	100:7 111:6	default 45:15
99:10 100:2	148:19	168:12 214:3	111:8,18	48:6 61:14
100:8,14	151:20,21	214:12	125:9,12	61:18,21
101:14	155:18	covered 104:10	126:6,15	207:10
102:17	156:10	104:13	137:15,16	defaults 45:21
103:12 104:9	159:14 167:3	107:12	database 19:11	defendant 2:7
104:12	167:16 168:4	129:21 141:7	125:4,6,15,20	5:19
107:12 124:4	169:8 174:18	covers 213:20	125:22 126:4	defendants
124:7 139:8	176:15	214:10	126:14,16	1:13 5:2
143:22	182:21	CPT 44:18	databases	132:18,20
153:22 154:2	185:13,15,16	125:11	23:19 24:5	133:2 166:4
154:3,7,11,16	189:14	create 176:10	date 164:19	define 28:18
155:7,11	193:12 194:8	186:16	219:17	defined 154:9
156:7 161:13	194:12,15,19	created 175:11	221:10	definitely
162:19	209:5 212:17	credible 111:6	day 53:10	68:19 93:9
165:10,20	217:20 220:4	current 21:18	68:10 105:16	216:16
192:13,14	220:5	41:16 182:19	148:12	definitions
199:10	couldn't 43:6	182:22	153:12,22	28:18
201:17	218:6	183:16	157:6 224:16	definitive 93:6
213:21 214:3	counsel 36:16	185:10	deal 49:18 73:3	definitively
214:12,13	37:3 72:14	219:20		216:19

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

12

Degree 7:7	97:11 188:21	11:14,15,16	175:12,21	discount 13:5
deliver 38:1	216:10	12:6,10 13:7	202:10,10	92:8 102:6
demands 95:22	description	17:9 19:5,20	214:4	discounts
132:20	3:10 128:4	31:8 32:21	differential	221:19
denominator	135:16 217:7	38:15,19	27:17 109:4	discover 63:6
82:21	217:9	46:1 57:2	109:13 139:1	discuss 87:7
denotes 176:7	designate 5:5	70:21 72:3	140:4 141:7	195:13
department	designated	79:1 100:22	202:22	discussed 86:5
161:3,5	28:8 34:12	116:22 131:8	differentiated	93:18 146:12
depend 27:2	designations	141:22	110:6	170:9 183:10
dependent	5:11	159:15	differentiation	185:21
203:2	designed 44:18	163:22 174:3	138:15	198:10
depending	74:10 179:12	174:11,15,17	140:19	discusses
26:17 102:9	desire 109:13	178:4 191:5	differently	155:12
124:10	desired 85:9	191:12,17	192:13	discussing
212:14	detail 91:21	194:21 195:2	direct 11:1,18	83:4 89:13
Depends 62:2	217:20	195:13,16	11:19 12:19	132:13
deponent	detailed 213:9	204:14,20	77:12 80:8	133:14
118:21 224:9	219:1	212:21	80:16 163:10	discussion
deposed 5:3,20	determination	didn't 43:6	184:2 185:7	39:16 69:5
5:22	75:18 206:4	187:6 207:4	185:7,19	100:19
deposition 1:9	208:16	215:10	188:2,8	157:19 171:5
1:18,20 5:6	determined	diem 87:2,11	209:16	175:17
6:2,4,8,18	204:22	121:4	directly 15:12	190:18 191:8
10:22 36:6	determines	difference	15:16 63:13	dispensing
36:10 114:7	89:17	33:17,21	78:22 110:1	153:22
115:3 121:13	determining	34:1 71:10	189:2	156:19 157:6
121:16 131:3	97:6 164:3	71:20 74:2	director 7:17	189:3
143:13	186:15 198:5	94:19 141:1	8:2,8,12,19	dispute 6:5
148:16 149:3	develop 97:20	141:13	9:21 10:14	distinction
151:19	developed	182:16 185:6	18:20 103:9	88:18 92:14
158:15	20:12 44:3	203:13	125:3	93:12 121:14
161:11 172:5	45:22 99:21	205:21 207:9	disabled 8:6	DISTRICT 1:1
173:9,17	developing	207:16,17	disagree 31:19	1:2
174:3,12,20	33:11	different 16:20	36:13 71:6	divided 178:14
187:4 194:20	development	23:9 30:16	72:20 115:11	doctor 203:10
195:14 223:9	44:17 75:8	57:6 60:3	119:3 122:2	206:8 207:20
224:5,9	diagnostically	61:22 66:5	159:2	doctors 198:21
derived 111:8	121:3	77:4 82:2	disclose 62:14	199:9 200:9
212:15	dictates 61:1,1	85:2 92:6	63:2	200:21
describe 6:22	79:16	98:4 130:7	disclosed 152:1	203:17,20
7:12 21:11	did 7:5,9 8:20	138:19,20	disclosure	204:2
220:19	9:11,13,22	139:1 149:16	114:8 151:21	document 1:6
described	10:18 11:3,6	160:7 167:15	156:6	41:14,15

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

13

130:22	107:18 108:6	54:8 87:11	dose 153:12	56:3 57:11
131:13,17,21	109:12,22	99:20 176:20	doubt 103:3,16	57:21 58:3
133:7 137:1	110:21 111:4	177:14	103:21 104:5	60:1 70:12
141:19	112:1 114:2	180:12	104:6,7,8	76:18 86:15
147:18 148:9	114:15,19	dollars 68:11	doubting	88:1,19,21
148:20,21	115:3 116:4	205:18	103:6,18	89:8,10
149:1,6,11	116:15 119:4	domain 164:7	down 6:12	92:14 96:13
150:9 151:8	121:5,18	done 39:8 54:6	48:18 52:9	101:11
152:22	124:18	63:21 68:10	52:13 79:10	118:10 121:6
155:10	125:22 126:1	69:1 77:18	91:21 127:2	129:12,16,19
157:17 158:5	126:9 129:18	93:8 110:3	138:7 154:2	130:3,12,13
158:9 159:1	138:22 142:1	121:12	171:22 194:9	130:15,16
159:9 160:21	142:6,11	156:11	194:16	135:6 136:18
162:15 163:6	155:6 156:3	157:17	208:12	142:15
164:20 165:8	156:6 158:16	169:15	217:14,22	163:19 164:1
167:22 168:2	161:17 164:2	185:13	218:20 220:5	168:21
168:5 169:13	173:3 177:17	219:17 221:5	draw 131:14	197:19,22
174:13,15,18	178:22 179:1	don't 17:4 32:8	132:7 134:18	199:10,15
174:19 178:4	183:14 184:2	37:13 41:19	148:19	200:3,9,21
178:15 179:5	187:16	55:2 65:12	150:13	201:6 202:12
181:10 187:6	188:17 190:1	72:2 75:13	152:13	203:1,3,14
187:7	190:2 192:2	75:14 76:5,7	159:14,19	205:15,15,17
documentati...	192:5 202:21	76:14 79:18	165:7 168:16	205:18,19
154:11 213:9	202:22 203:4	84:4 91:20	168:18	217:2,15,18
documents	203:12,16,17	93:5 101:16	DRG 121:2	218:7,20,20
88:6 124:18	214:1,3	101:17	drive 89:20	219:16
132:17 133:4	216:20	106:15 107:2	95:6 96:4	drugs 10:19
158:18 159:8	doesn't 51:7	114:6 120:14	108:14	11:4,8 12:11
169:21,22	99:14,15	122:8 128:21	driven 94:21	12:13,20
170:2	102:17	129:3 140:15	97:2 141:13	13:8 14:13
does 4:4 22:4,4	103:11,13	147:16,16	drives 72:22	14:18 15:4
29:5 32:21	145:10	151:17	90:4 95:9,18	15:12,15,19
33:1,4 34:2	147:15	155:12 157:3	96:3 98:16	16:8,9,13,14
34:13,20,22	155:22 157:5	168:7 169:14	139:21	16:19,20
36:9 48:13	166:2 182:9	171:12 174:1	drug 5:19	17:6,7,18
58:7 60:11	189:6 196:9	179:7 181:14	13:21 15:13	18:4,12 20:8
62:4,14,18	198:9 205:3	184:19 196:2	15:19 23:9	21:2,14
65:15 74:12	doing 9:19	196:2 197:8	28:4,7,9,9,22	23:11 24:1
85:18 88:17	68:21	205:11	29:2,4 30:8	24:12 28:2,9
88:20 89:13	dollar 11:16,19	211:11,16	30:14 31:9	28:12,21
89:13,14	13:22 14:14	217:22	32:4,12 39:4	29:7,7,15,16
90:7,21 96:4	14:19 15:22	218:20	39:11 47:22	30:16 33:17
99:16 100:1	16:3 52:19	dosage 129:17	48:3 52:12	38:1,18 39:1
103:14	53:4,10,21	129:20	53:5,15 54:9	39:21 40:3

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

14

40:10,16	166:3,12	132:10	85:19 108:7	54:22 55:12
43:10 44:8,9	167:19 169:5	133:12 160:1	108:9 123:10	86:7
44:19 46:19	170:12 171:2	160:4 224:1	183:2 220:22	employee
56:15,20	171:17 176:1	224:1	effective 121:7	224:12
57:12,15	179:17 180:7	each 28:13,18	effort 95:9	employment
58:9 59:4,16	180:14	86:11 110:8	eight 165:8	7:13 119:16
60:5,17 61:6	183:20 190:3	203:20 218:7	eighty-five	133:20
62:10,15,19	191:19	218:7 219:10	214:20	170:10
63:2 64:3,5	195:17	earlier 14:9	215:12 216:1	193:10
64:18 65:8	197:13,17	23:21 38:10	either 44:4	employs 77:21
65:17,18	198:7 199:2	50:12 58:12	49:10,16	86:6
66:9 68:1	199:8 203:12	78:21 94:14	62:2 77:10	enable 110:18
77:8,12,14	205:8 208:18	96:14 100:1	81:16 90:6	enables 118:1
81:6 82:17	208:22	105:16	109:15	125:15
83:8 88:19	210:19 211:1	108:16 109:4	123:11	139:22
91:18 93:19	211:12,14,17	110:17 122:8	185:10	218:10
94:12,18,22	212:5 213:1	126:22	193:20	encompass
95:4,8 96:19	213:6 214:6	127:13 142:1	elects 85:12	58:8 142:8
97:1,8,18	215:1,5,11,14	154:14	elements 85:21	207:4
99:14,21	215:19 216:2	160:16	126:7,15	encompassed
100:2,3,9,15	218:1,5,18	170:13 171:7	elicited 135:2	119:5 122:3
104:14,19,20	219:4,9,10	184:18	eliminate	143:15
105:4,18	221:8,13	185:22 192:1	109:22	162:20 166:5
106:17 107:4	drug's 29:12	192:15 197:5	126:15	encompassing
118:17	30:17 49:8	210:3 211:11	else 19:14,18	206:19 207:2
120:18 121:1	duly 5:2 224:6	211:15	40:14 71:13	encounter
122:10,15,16	during 6:18	early 166:10	75:15 76:15	207:11
123:1,4,18,20	14:16 17:19	easier 117:4	87:12 106:11	end 7:20 50:21
124:11,11	24:17 28:1	159:4	107:5 108:8	51:9,14
126:10,20	68:5,14	economically	134:5 172:14	53:10,21
127:6 130:8	92:13 102:13	203:21	176:8,8	54:10 68:17
134:22 135:1	107:12	Ed 131:6 168:6	180:8,15	68:18 78:9
135:4,9	178:19 187:3	196:16 197:4	195:2 211:18	78:12 85:9
136:2 139:8	190:18	201:14 220:4	212:1,9,14	98:3 192:21
142:5,9	duties 149:7	223:4	216:6,13	193:22 194:8
143:11 147:8	dynamic 97:10	educate 173:16	223:4	194:16
153:16	202:9,14,15	educated 20:19	emphasis 7:7	ended 193:13
154:17	dynamics	189:21	46:3	ends 85:15
155:12	203:14	educational	employ 82:18	96:9
160:11	208:10	7:1	86:16 164:20	Energy 7:21
161:14	E	EDWARD	employed 27:9	engage 80:7
162:19	E 2:1,1 3:1,9	1:10,18 2:2	46:22 47:2	engaging 79:3
163:16	56:13 132:4	3:2 5:1 224:6	48:11 49:7	enhance 65:22
165:17 166:3		effect 37:4	49:22 52:21	125:9

Edward Lemke

Confidential
Louisville, KY

January 11, 2005

15

enough 85:20	163:17	206:7	147:19,22	224:18
94:16, 101:9	167:21	EXAMINAT...	150:8 157:20	explain 30:5
112:3 147:9	establishes	3:4,5,6,7	157:22 162:8	85:1,4,21
147:15	23:5	5:14 197:2	162:9 168:6	96:17 140:18
201:22	establishing	202:6 208:7	168:9 174:20	192:3,5,9
enrollees 199:1	219:15	examine 146:1	175:5 204:7	201:2 207:17
ensure 111:13	estimate 57:18	example 25:10	209:5	208:20
149:18	212:3	29:1 56:18	Exhibits	explaining
entailed	et 138:6	70:9 77:16	169:21	83:9
205:16	evaluations	109:8 130:2	exist 27:13	explanation
enter 67:14	144:7	160:15 192:8	89:19 99:15	95:14
entire 20:1	even 18:12	209:10	99:15 101:1	explicitly 36:5
56:9 78:16	50:4 65:12	210:16	118:14 120:5	36:22
180:13	66:6 83:15	except 220:10	120:10,15	expressed
entirely 37:15	83:18 97:15	excess 217:15	142:11	14:18 105:18
52:6 75:1	156:17 213:4	exchange	171:18	182:10
107:5 114:19	213:6	132:22	172:10	expresses
211:18	event 211:5	excluded 36:6	existed 27:14	165:11
entities 170:14	eventually	36:8,22	30:20,22	expressly
entitled 175:6	53:19	121:17	120:8,12	155:6 156:18
176:19	ever 5:20 32:8	161:15	existence 120:1	extends 14:5
entity 18:11	60:11 62:4,8	188:21 222:3	125:20	extensively
90:2,3 151:8	91:20 116:15	exclusion	exists 20:17,18	126:5
162:4,6	133:17 141:9	118:16	78:17 122:6	extent 20:10
entry 176:16	143:4 146:6	132:15	217:21	20:14 29:15
equal 207:15	146:15	148:13	expanded 20:3	31:15 34:14
207:15	154:15 190:6	158:15	46:13	38:21 63:8
equally 108:21	190:7	162:16 189:5	expectation	63:10,18
198:20	every 84:2	exclusive 116:2	122:13,22	64:8 65:21
equivalent	142:13	exclusively	123:10,15,17	71:11 92:13
125:10	everything	33:12 77:12	123:21,22	115:12 129:6
especially	51:18 126:12	105:9 121:16	124:4,6	130:16
24:11 46:2	180:15	213:14	expects 198:21	132:19
191:11	exact 57:17	EXCUSED	expense 206:8	143:19
essence 205:6	66:13	223:8	expensive	146:11 157:2
essentially	exactly 122:9	executive 9:21	203:6	159:3 160:8
78:6 140:4	217:5	exercised	experience	168:2 189:15
establish 75:10	exaggerate	143:5 146:6	68:4 101:12	194:2 198:9
95:11 97:1	200:8	exercising	120:8 147:11	200:11
185:11	exaggerated	146:15	171:11 213:2	219:19 222:1
187:21 201:5	201:7 222:16	exhibit 3:12,14	216:10	extract 125:7
established	exaggerates	3:16,18,20,22	expertise	extreme
15:3 24:8	200:20	41:20,22	145:18	112:10
29:6 46:16	exaggerating	131:2,4	EXPIRES	eye 68:16